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A

DIGEST OF CASES

DETERMINED

IN THE

COURT OF QUEEN'S BENCH,

FROM

MICHAELMAS TERM, TENTH GEORGE IV.

TO

HILARY TERM, THIRD VICTORIA.

BY

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Barrister at Law.

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PREFACE.

THIS DIGEST is submitted to the members of the Profession, in the hope that it may be found of some service, in making them more generally acquainted with the decisions of the Court of Queen's Bench, and in supplying in some degree the want which they have hitherto experienced, of means to obtain a knowledge of the adjudged cases. I have intended it particularly for the profession in the country, who have not even the limited access to information, which the profession in Toronto enjoy from the manuscript Reports, and if they shall receive any assistance from it, the end that I proposed will be greatly answered. To the profession generally, it will serve as a useful index to the manuscript cases, which will hereafter be found at length in the Law Society's Library, and it will obviate the difficulty, which has been hitherto experienced, in discovering the Term in which any case has been decided. Of the manner in which the epitome is made, I leave the profession to judge, requesting only that they will bear in mind, that in almost all the cases which have been adjudged during the last three years, I have been obliged to collect the facts, sometimes from the papers filed, and sometimes from the notes of the Judges, and that, as during that period very few decisions have been entered in the Reports, I have not had the same facilities in digesting the judgments which the Court has given during those years, as in digesting those of the years preceding. As I relied too for the judgments of the Court during that period, upon the manuscript opinions of the Judges, with which they all most kindly furnished me on my giving them the cases in which judgment had been pronounced, and as I could discover those cases only by examining the Term book in the Crown Office, I am afraid that it may be found that I have overlooked some cases, and that consequently some decisions are omitted, but as it is my present intention to continue this work by publishing, at the end of Hilary Term in each year, a Digest of the cases for the preceding year, I may, hereafter, be enabled to remedy this defect, and also to make any alterations in the arrangement of the subjects, or in the work generally, which may render it more useful to the members of the Profession. To Mr. Justice Macaulay I must express my great obligation for the assistance he has rendered me; and to Mr. Draper, for kindly giving me a manuscript digest of the greater portion of his own reports, which have appeared in print. I have added a Table of the Rules of Court, and as they have never all appeared in print before, and many of them perhaps may never have been seen by some of the profession, I am in hopes that they may add to the utility of this work for reference in matters of practice.

J. HILLYARD CAMERON.

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ABATEMENT.

In a plea of non-joinder by a defendant in abatement, it is sufficient to state that the parties not joined are living within the jurisdiction of the court at the time of plea pleaded, and a replication to such a plea for the non-joinder of two persons is not double for assigning a different cause for not joining each of the two.—Yuille *vs.* Harvey. Michs. 2 Will. IV.

Where to a plea in abatement of privilege as an attorney, the plaintiff replied process issued against him and others under 5 Will. IV. ch. 1, (restraining several actions on bills, notes &c.) and that the others could not be served, &c. and the defendant demurred—the court overruled the demurrer.—Richmond et al. *vs.* Campbell one, &c. Michs. 2 Vic.

Where there is Judgment for plaintiff on a demurrer to a plea in abatement, he cannot recover costs under 7 Will. IV. ch. 3, sec. 36 until the termination of the suit. —*Ib.* Hil. 2 Vic.

If a plea in abatement of the non-joinder of a defendant do not state his place of residence, it is a nullity.—Brewster *vs.* Davy. Hil. 2 Vic.

A plea of non-joinder in abatement is bad on demurrer, if it state only the initial letters of the christian names of the party not joined.—Hastings *vs.* Champion et al. Michs. 3 Vic.

Where a Feme sole, plaintiff, had married after rule nisi obtained for Judgment as in case of a non-suit, which was afterwards made absolute, and she applied to set it aside, her rule was granted on payment of costs, and leave was given to the defendant to plead the coverture puis darrein continuance without affidavit.—Warren administratrix *vs.* Kirby. Michs. 3 Vic.

A plea of non-joinder in abatement of a co-defendant fails where there is a third contracting party not named, although such third party be out of the Province. The plea in such a case should shew all the parties liable, and then state that one is out of the Province.—McKnight *vs.* Scott. Michs. 3 Vic.

ABSCONDING DEBTOR.

An attachment was refused under the absconding debtors' Act 2 Will. IV. ch. 5, where only one person besides the creditor swore to the debtor's absconding or concealment; and per curiam, the safest rules in framing affidavits under this statute will be to follow as nearly as possible those relating to the common affidavits of debt.—Anonymous. Hil. 2 Will. IV.

Where the persons swearing to the departure or concealment of a debtor reside

at a distance from his place of abode, they should state in their affidavits the grounds of their belief.—Bank U. C. *vs.* Spafford. Hil. 2 Will. IV.

An attachment against an absconding debtor may issue pendente lite; but where a defendant was arrested and gave bail, who were afterwards discharged by a reference to arbitration, and he then left the Province, an attachment which had been issued against him as an absconding debtor was set aside.—Mosier *vs.* M'Can. Hil. 3 Will. IV.

Where a plaintiff proceeded, after a delay of more than a year from the issuing of his attachments, the proceedings were set aside and writs of supersedeas ordered to the attachments.—Bank U. C. *vs.* Spafford. Hil. 3 Will. IV.

An absconding debtor who, having returned to the Province, gives the bond required by the act, and puts in special bail, may have a supersedeas to the attachment. —Clark et al. *vs.* Mallery. Easter, 3 Will. IV.

Mesne process cannot issue under the absconding debtors' act, until three months have elapsed from the first advertisement under the attachment.—Banker *vs.* Griffin. Easter, 3 Will. IV.

An attachment was set aside, the affidavit of the creditor being for money lent, and not stating by whom, and a certified copy of an affidavit filed in the Office of the Clerk of the Crown is sufficient to move upon.—McKenzie *vs.* Russell. Hil. 4 Will. IV.

The property of a person who usually resides in the United States, but who engages in an undertaking in this country, employs persons here, and comes frequently to superintend their work, may be attached under the absconding debtors' act.—Ford *vs.* Lusher. Hil. 4 Will. IV.

The sureties required by the plaintiff, under the absconding debtors' act, before execution can be issued, must be inhabitants of this Province.—Bradbury *vs.* Lowry. Hil. 4 Will. IV.

Where a debtor, who absconded from the Province, before his departure gave his cognovit for £700 to a person to whom he was not indebted, on which Judgment was entered, Execution issued, and some money made by the Sheriff, and some paid to the Plaintiff's Attorney, the Court on the affidavits and application of several bona fide creditors of the absconding debtor, ordered the Attorney to pay to the Sheriff the money he had received, and the Sheriff to divide all the money between the creditors who had executions in his hands, rateably according to their several claims.—Bergin *vs.* Pindar. Trinity, 4 & 5 Will. IV.

Where a defendant moved to set aside an attachment and subsequent proceedings under the absconding Debtors' Act several months after the last proceeding was had, on the ground that the Plaintiffs were not inhabitants of the Province, but filed no affidavit shewing that he was not indebted to any inhabitant of the Province, the Court refused the rule and left him to his action.—Fisher et al. *vs.* Beach. Hil. 5 Will. IV. See now 5 Will. IV. ch. 5.

The bonds required to be given by an absconding debtor to obtain a supersedeas to the attachments against him, must be in double the amount of the debt sworn to.—Heather *vs.* Wallace. Hil. 5 Will. IV.

An absconding debtor returning to the Province, after trial and before Judgment, is entitled to a new trial under the Statute. —Robertson et al. *vs.* Buck.

Under the absconding debtors' Act, a first attaching creditor was entitled to priority over a subsequent attaching creditor, who obtained execution first.—Gamble et al. *vs.* Jarvis. Trinity, 6 & 7 Will. IV. See now 5 Will. IV. ch. 5.

An attachment will not be granted against an absconding debtor for unliquidated damages.—Clark *vs.* Ashfield. Easter, 7 Will. IV.

After an attachment has been issued against an absconding debtor, a rule will be granted against any party, who has property of the debtor in his possession, to deliver it up to the Sheriff to whom the attachment is directed.—Mullens *vs.* Armstrong. Michs. 2 Vic.

The affidavit of justification by the sureties, required under the absconding debtors' Act before execution, must be made by

the sureties themselves.—Mowat *vs.* Forshee. Easter, 2 Vic.

In the affidavit of two credible witnesses required before attachment against an absconding debtor, it is sufficient to state their belief that the debtor "has left the Province or is concealed within the same."—Totten *vs.* Fletcher. Trinity, 2 & 3 Vic.

ACCOUNT STATED.

The plaintiff may recover on the count for an account stated, on an express promise to pay the amount of an account, the admission of the correctness of which by the defendant, cannot be received in evidence under 2 Geo. IV. ch. 13, the account being made up and rendered in New York currency, and the debt having been contracted in this Province.—Crooks et al. *vs.* Law. Trinity, 7 Will. IV.

ACTION.

No action lies in this Province against an heir on the simple contract debt of his ancestor.—Forsyth *vs.* Hall. Hil. 1 Will. IV.

Trespass or case will lie for seduction.—Cavan *vs.* Walsh. Michs. 1 Will. IV.

An action on the case may be maintained against a bailiff of a Court of Requests, for falsely swearing to the service of a summons on the plaintiff, whereby Judgment was given against him; and the common law remedy is not taken away by the action given on the bailiff's covenant by the Court of Requests Act.—Cline *vs.* Macdonald. Easter, 2 Vic.

AFFIDAVIT.

In the jurat of an affidavit sworn by an illiterate person, the omission of the statement that the deponent appeared to understand it, is fatal.—Moore *vs.* James. Michs. 1 Will. IV.

An affidavit made by two persons, not stating distinctly in the jurat that both were sworn, cannot be read.—Nicholson dem Spafford *vs.* Roe. Hil. 3 Will. IV.

But an amendment will be allowed by the insertion of their names.—Fisher *vs.* Thayer. Trinity, 7 Will. IV.

ALIEN.

A conveyance in fee to an alien is not void, but he holds for the benefit of the Crown, and is entitled as against all others, until the land is seized into the hands of the Queen on office found, and if a subject be a trustee for an alien, he has the legal estate, and the Queen is entitled to the profits; and a person claiming through an alien may have a good title, although the alien himself would hold only for the benefit of the Crown, and semble, a person claiming lands under a Sheriff's deed sold at the suit of an alien, is entitled to recover in ejectment notwithstanding Stat. 5 Geo. II. it being necessary to take the objection of alienage, if available at all, before execution executed.—Doe Richardson *vs.* Dickson. Hil. 2 Will. IV.

A person who was born in the United States before the revolution, and has continued to reside there since, is an alien, and cannot maintain ejectment in this country.—Doe Patterson *vs.* Davis.—Easter, 7 Will. IV.

ALLEGIANCE, (OATH OF)

The certificate of a Commissioner for administering the oath of allegiance, that such oath was administered, is sufficient evidence thereof after the death of the Commissioner, and of the person who took the oath.—Doe *vs.* Lindsay. Easter, 11 Geo. IV.

AMENDMENT.

Mesne Process.—The Court refused to amend, after an arrest, a writ of Capias ad respondendum by making it a Testatum, although a præcipe for a Testatum was filed.—Campbell *vs.* Hepburn. Michs. 10 Geo. IV.

Affidavit.—An amendment was allowed in the Jurat of an affidavit sworn by two persons, by inserting their names, on payment of costs. — Fisher *vs.* Thayer. Trinity, 7 Will. IV.

Declaration.—Where the plaintiff had declared against several defendants, when only one had been served, an amendment was allowed by striking out of the declaration the names of those not served.—Zavitz *vs.* Hoover. Michs. 1 Vic.

Declaration.—The Plaintiff was allowed to amend his declaration after issue joined on nul tiel record, by substituting promise and undertaking for promises and undertakings, although there had

been a trial on other issues concluding to the Country.—Church *vs.* Barnhart. Easter, 1 Will. IV.

Declaration—Ejectment. — The Court refused an amendment in a declaration in Ejectment, by altering the name of the Township, in which the lands for which the action was brought were stated to be situated.—Doe *vs.* Roe. Easter, 11 Geo. IV.

Verdict. — A verdict taken for the amount of the penalty of a bail bond to the limits, was allowed to be amended by the Judges' notes, by reducing it to the sum indorsed on the capias ad satisfaciendum, with interest and Sheriff's fees.—Callaghan *vs.* Strobridge. Easter, 11 Geo. IV.

Assessment of Damages.—An amendment in pleadings will be allowed after the assessment of contingent damages on a demurrer subsequently decided against the plaintiff, where the justice of the case requires it, and the plaintiff would be finally concluded.—Breakenridge *vs.* King. Trinity, 5 and 6 Will. IV.

Assessment of Damages.—Where on an assessment of damages on a promissory note stated in the declaration to be for £40, a note for £42 was produced in evidence, an amendment of the Record to correspond with the proof was refused, but the Court allowed a verdict to be entered for the amount of the note set out in the pleadings, on the other note being filed as the one on which the action was brought.—Bank U. C. *vs.* Crawford. Trinity, 5 and 6 Will. IV.

Judgment.—Where in debt the plaintiff had assessed damages to an amount greater than his declaration warranted, and had entered judgment for that amount as if the form of action had been assumpsit, and issued executions some in debt and some in assumpsit, an amendment was allowed by reducing the damages, &c. on payment of costs.—Averill *vs.* Powell. Michs. 2 Vic.

Execution. — An amendment was allowed in a Fieri Facias against lands after a sale under it by the Sheriff.—Fleming *vs.* Exors of Wilkinson. Trinity, 1 and 2 Vic.

Scire Facias. — In a judgment on a scire facias against an administrator, an amendment was allowed in the name of the intestate, by making it correspond with the name in the original judgment against him.—Willard *vs.* Woolcott. Trinity, 11 Geo. IV.

Appeal.—A record was amended in matter of form after an appeal to the King in Council. — Rowand *vs.* Tyler. Easter, 7 Will. IV.

APPEAL.

An administrator will not be allowed to revive a judgment in favour of his intestate by scire facias, pending an appeal to the King in Council in the original action, although it be proved by affidavit, that the plaintiff below in whose favor judgment was given in the court below, died after judgment, and before the allowance of the appeal to the King in Council, though after the allowance of that to the Governor and Council.—Washburn, Admr. *vs.* Powell. Easter, 2 Will. IV.

APPRENTICE.

An Indenture of apprenticeship contrary to the provisions of 5 Eliz. ch. 4, is not void, but voidable, and semble, that statute is not in force in this Province.—Fish *vs.* Doyle. Hil. 1 Will. IV.

ARBITRATION.

In debt on an award that the defendant should pay to the plaintiff £149 on a day named, and that the plaintiff should deliver up a house in his possession to the defendant on the same day. Held that these were concurrent acts, and that the plaintiff must aver a readiness to perform his part. —Baker *vs.* Booth. Hil. 10 Geo. IV.

A reference to arbitration by order of Nisi Prius may be revoked by either party before award made.—Burrill *vs.* Mills. 1 and 2 Will. IV.

Where it is awarded that one party shall pay money, and the other shall deliver up premises on the same day, in an action for the money, it is sufficient to aver a readiness to deliver the premises, and vice versa, and where to a plea that the defendant demanded the award from the arbitrator on 5th Feb., the plaintiff replied, a publication and notice of award on the

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warded that one party and the other shall de. on the same day, in an ey, it is sufficient to aver liver the premises, and here to a plea that the ed the award from the eb., the plaintiff replied, notice of award on the 5th (the day when the award was to be made) the Replication, was held good.—Baker *vs.* Booth. Hil. 2 Will. IV.

A cause was referred to arbitration, costs to abide the event, and the arbitrators having made no award, the parties agreed to refer the cause to any Judge of the District Court, who should first come to Perth, and a District Court Judge having come there, heard the evidence and awarded that the plaintiff in that suit had no cause of action, and that judgment should be entered for the defendant. Held that the award was good, and that the defendant might maintain assumpsit for the taxed costs of the cause, and was not obliged to enter judgment. — Hall *vs.* Mathison. Hil. 3 Will. IV.

Where a plaintiff having two actions pending, one in a representative character, and the other in his own right, referred both to arbitrators, who were to make their award by a certain day, or appoint an umpire in writing, and the arbitrators not being able to agree, appointed, but not by writing, an umpire, who made an award, which the arbitrators adopted and published as their own, before the time limited for making their award had expired, and awarded thereby a sum of money to the plaintiff in his representative character. The Court on affidavits of the umpire and one of the arbitrators that the money was intended for the plaintiff in his own right, refused to grant an attachment for non-payment of the sum awarded, and afterwards on motion set the award aside.—Dennison *vs.* Sandford. Hil. 4 Will. IV.

An award was set aside on account of unfair conduct in the arbitrators in their manner of hearing the evidence.—Hamilton *vs.* Wilson. Michs. 5 Will. IV.

Where a verdict was taken for £200 subject to be reduced by arbitrators, the costs to abide the event, and the award was for the defendant, it was set aside as being beyond the submission, the arbitrators being empowered only to reduce the plaintiff's verdict, and the condition as to costs giving them no authority by inference to deprive the plaintiff of it altogether, but applying only to the amount of costs to be eventually taxed.—Shaw *vs.* Turton. Hil. 5 Will. IV.

Where certain matters in difference between A. and B. were referred to arbitration, and also "all costs of suit commenced or prosecuted by either party, whether civil or criminal," and the arbitrators awarded that B. should pay a large sum to A. and also all costs of suits. Held that the award was sufficiently final without stating that the suits should cease, and that it could not be impeached, because damages had been estimated by the arbitrators on some matters into which they should not have inquired.—Ducat *vs.* Green. Hil. 5 Will. IV.

Where on a reference between A. and B., A's agent attended on his behalf, and after B. had given evidence to the amount of £200, retired, understanding from the arbitrators that the case was closed, and B. in his absence induced two of the arbitrators to award him £1000, the third refusing to consent. The award was set aside on payment of costs.—Van Egmond *vs.* Jones. Hil. 5 Will. IV.

If a bond of submission contain a clause that the submission shall be made a rule of court, it is not necessary that an agreement enlarging the time should be made a rule of Court as well as the submission, and it is too late to object to an award after a lapse of four terms from the publication, and an attachment granted for non-performance.—Crooks *vs.* Chisholm, et. al. Hil. 5 Will. IV.

Submission by bond with a day limited to make the award, on which day the arbitrators being then prepared with their award, but all parties believing that the time limited would not expire till the following day, deferred the publication then at the request of the defendant, and heard further evidence on both sides on the following day, and then made their award. Held that the extension of the time was a parol submission, and that assumpsit was maintainable thereon for not performing the award, although no action could be brought on the bond.—Hull *vs.* Alway. Hil. 6 Will. IV.

Where all matters in difference in law and equity have been referred, and the award is legal on the face of it, it will not be set aside although it may seem that the arbitrator has mistaken the law and the amount awarded is large, and the Court will refer to papers delivered by the arbitrator simultaneously with the award, and intended to be explanatory of it, as a part of the award itself.—Hall *vs.* Fergusson, et al. Hil. 6 Will. IV.

A breach in a declaration on an award for the payment of money on or before a certain day, that the money was not paid on the day,is sufficient on general demurrer, and it is not necessary to aver notice of an award.—Turner *vs.* Alway. Hil. 6 Will. IV.

In debt on bond conditioned to perform an award, a plea setting forth more legal grounds of objection, and concluding to the country, is bad, and if there be two separate parts in the award, matter which answers only one part cannot be pleaded in bar of both, and if two breaches be assigned in the replication, it will be sufficient on general demurrer if one only can be supported.—Boyd et al. *vs.* Durand. Easter, 6 Will. IV.

Where a verdict is taken for the plaintiff subject to a reference, and no award is made owing chiefly to the neglect of the defendant, the Court will allow judgment to be entered for the amount of the verdict, unless the defendant will submit to another reference on reasonable terms.—Watson *vs.* Fothergill. Easter, 6 Will. IV.

In moving for an attachment for non-payment of money pursuant to an award, it must appear distinctly by the affidavit that the demand was not made too soon. —Baines *vs.* McMartin. Easter, 6 Will. IV.

Where arbitrators to whom disputes arising from the overflowing of three acres of the plaintiff's lands by water thrown back by defendants' mill, were referred, awarded damages to the plaintiff for the injury, and that the defendants should have a fall of nine feet and no more for their Mill Dam, provided that the water on the plaintiff's land was not raised thereby; and the defendants raised their dam to nine feet, and overflowed five acres more of the plaintiff's land.—Held that the award did not prevent his recovery of compensation for such further injury, and that he was entitled to damages for the loss of the additional five acres. — Casler *vs.* Ransom et al. Trinity, 7 Will. IV.

An award that the defendant should pay the plaintiff a certain sum including the costs of the reference, and afterwards directing that each party should pay half of the same costs, is bad for repugnancy. —Shaver *vs.* Scott. Trinity, 7 Will. IV.

Where on an application to set aside an award it was sworn that the original was in the possession of the plaintiff's Attorney who refused to give it up, a rule nisi was granted which was afterwards made absolute on the production and verification of the copy of the award served. —Steen *vs.* Glass. Michs. 1 Vic.

A plaintiff who takes a verdict subject to a reference, but does not proceed to arbitration owing partly to the fault of the arbitrators, partly to the delay of the defendant,cannot enter judgment on the verdict without first applying to the Court.—Mott *vs.* Loucks. Trinity, 1 & 2 Vic.

Where to a declaration in debt on a submission bond with an averment that the award was made on the day appointed, the defendant pleaded no award, and the plaintiff replied an award within the time, to wit, on a day in a year different from the year stated in the declaration. The replication was held sufficient on general, although it would have been bad on special demurrer.–Judge *vs.* Judge.Michs. 2 Vic.

A plaintiff in ejectment, who before action brought, has submitted the question of the possession of the premises to arbitration is estopped by an award in favor of the defendant, and where the submission is, that the award shall be *delivered* by a certain day, if it be *ready for delivery* by that day, it is sufficient.—Doe. Galbraith *vs.* Walker. Easter, 2 Vic.

An award made in the course of a cause, does not operate as a stay of proceedings; and if the plaintiff proceed, and

the defendant relies upon the award, he must plead it puis darrein continuance.—Fido *vs.* Wood. Easter, 2 Vic.

ARMY.

In an action by a contractor against the Colonel of a regiment for clothes made for his men, it should be left to the Jury whether the credit was given to the Government or the defendant.—McElderry *vs.* Baldwin. Michs. 3 Vic.

An action cannot be maintained by an officer against the paymaster of his regiment for the amount of his pay, where the paymaster is directed not to pay it over, by the commanding officer.—Elliott *vs.* Hall. Hil. 2 Vic.

ARREST.

Affidavit of Debt.—Where, in an affidavit to hold to bail on a promissory note, the word "payable" to was omitted, the arrest was set aside.–Andruss *vs.* Ritchie. Michs. 10 Geo. IV.

Trespass.—In trespass de bonis asportatis, an affidavit that the defendant took possession of the plaintiff's goods, and still keeps possession of them, is sufficient to warrant an order to bail.—Ingraham *vs.* Cunningham. Easter, 11 Geo. IV.

Misnomer.—An arrest was set aside, where the defendant, whose name was Patrick, was called Peter, in the writ and affidavit. — Botsford *vs.* Stewart. Easter, 11 Geo. IV.

Foreigner.—An arrest founded on an affidavit made while the defendant was in the United States, in readiness, in case he should come over to this Province, was set aside as irregular.—Cozens *vs.* Ritchie. Easter, 11 Geo. IV.

Partners.—Where the affidavit of debt stated that two persons, trading under the name and firm of T & Co.were indebted to the plaintiff, and process issued against one only, the other being within the jurisdiction, the arrest was set aside.—Chisholm *vs.* Ward. Easter, 1 Will. IV.

Alias Writ.—Where a defendant was arrested on an alias writ, under 2 Geo. IV. chap. 1, and gave a *bail bond* to the Sheriff, after having entered an appearance to serviceable process. The bail bond was set aside with costs.—Douglass *vs.* Powell. Michs. 3 Will. IV.

Affidavit of Debt.—It is not necessary, in an affidavit of debt for money lent, paid and on an account stated, to state the sum due on each account.—Tannahill *vs.* Morgin. Easter, 2 Will. IV.

Cognovit.—A defendant who, without any process having issued, has given a cognovit with a stay of execution to a certain day, may be arrested on mesne process before that day; the taking of a cognovit not depriving the plaintiff of his usual remedies before execution.—Walton *vs.* Hayward. Easter, 2 Will. IV.

Second Arrest.—A second arrest for the same cause of action was set aside, where the plaintiff had been nonprossed in the first suit, and had not paid the costs.—McCague *vs.* Meighan. et al. Easter, 2 Will. IV.

Order to Arrest.—Where the plaintiff, a Quaker, resident in New York, made an affirmation of his claim before the Recorder of that city, and his agent in this country, also a Quaker, made another affirmation proving the handwriting of the plaintiff and the recorder, that the plaintiff was a Quaker, and that the person styling himself recorder was such, and had authority to take such an affirmation and that he was apprehensive the defendant would leave the Province, &c. The Court granted an order to hold bail.—Smith *vs.* Lawrence. Michs. 2 Will. IV.

Second Arrest.—A second arrest was allowed where the first had been set aside for a mistake in the affidavit of debt, the plaintiff having discontinued that action and paid the costs. — Sheldon et al. *vs.* Hamilton. Hil. 3 Will. IV.

Privilege.—A suitor attending a Court of Requests is privileged from arrest.—Baldwin et al. *vs.* Slicer. Hil. 5 Will. IV.

Indorsement.—A bailable writ issued by an Attorney in person, must be indorsed with a notice of the claim for debt and costs.—Washburn *vs.* Walsh. Michs., 6 Will. IV.

Indorsement. — The amount claimed for debt and costs must be indorsed on the bailiff's warrant as well as on the writ. — Steele *vs.* Lameux. Easter, 6 Will. IV.

Order to Arrest.—The ordinary conclusion in an affidavit of debt that the deponent does not make the affidavit, &c. from any vexatious or malicious motive, is unnecessary where an order is obtained for an arrest.—McLaughlin *vs.* Wismer. Michs. 7 Will. IV.

Affidavit of Debt. — An affidavit for goods sold and delivered must shew the request of the defendant, and the request being laid to other sums will not supply the defect.—Watkins et al. *vs.* Liebshitz. —Hil. 7 Will. IV.

Foreigner.—Where both the plaintiff and defendant were inhabitants of a foreign country, and had come together into this Province with the intention of remaining only a few hours, and during their stay here, the plaintiff made the usual affidavit and arrested the defendant. The arrest was held to be regular.—Raynor et al. *vs.* Hamilton. Michs. 2 Vic.

Affidavit of Debt.—An affidavit of debt against the indorser of a promissory note, or the drawer of a bill of exchange, must state the default of the maker or acceptor.—Ross, et al. *vs.* Balfour. et al. Michs. 2 Vic.

Privilege.—A person who, having attended as a Grand Juror at a Court which adjourned for a few days, went into another District on private business, was held not to be privileged from arrest there during such adjournment. — Mittleberger, et al. *vs.* Clarke. Michs. 2 Vic.

Attorney. — An Attorney coming to Court in Term time, on professional business which has been disposed of, is not privileged from arrest on a capias ad satisfaciendum. — Stroubridge *vs.* Davis. Michs. 2 Vic.

Warrant.—An informality in the warrant of the bailiff who made the arrest, is not a sufficient ground to set such arrest aside, especially where the writ itself is not produced. — Hussey *vs.* Link. Easter, 2 Vic.

Order to Arrest.—Where an application is made for an order to arrest, the affidavit must contain the ordinary conclusion that the deponent is apprehensive of the defendant's departure from the Province.—Wiltsee *vs.* Bloore. Easter, 2 Vic.

Second Arrest.—The Court refused to set aside a second arrest, where the defendant had been discharged from the first, on giving a promissory note jointly with a third person, and agreeing to pay the costs in a month; the note having been dishonored, and the costs not paid, although an action had been brought upon the note. —McDonald, et al. *vs.* Amm. Easter, 2 Vic.

Order to Arrest.—An order to arrest was refused in actions for malicious arrest and libel.—O'Conner *vs.* Anon. Darcus *vs.* Hall. Trinity, 2 & 3 Vic.

Alias Writ.—Where a Judge's order is necessary to arrest, a defendant cannot be held to bail on an alias writ, under the statute.—Bowman *vs.* Yielding. et al. Michs. 2 Will. IV.

Affidavit of Debt.—An affidavit of debt entitled in the District Court, instead of the Queen's Bench, is irregular, not void. —Sanderson *vs.* Cummings. Michs. 3 Will. IV.

ASSAULT AND BATTERY.

Where, in trespass for assault and battery, the defendant offered, but was not allowed, to prove, in mitigation of damages, that the plaintiff had slandered his wife, and that he had committed the trespass immediately on being informed of such slander, a new trial was granted, that all the circumstances might be elicited.—Short *vs.* Lewis. Hil. 4 Will IV.

To a plea of son assault demesne to a declaration for assault and battery, a replication that the defendant committed a breach of the peace and that the plaintiff being a constable and having view thereof, arrested him, is a good answer.—Fido *vs.* Wood. Trinity, 7 Will. IV.

Where to trespass for assault and battery, the defendant pleaded molliter manus in defence of possession and the plaintiff replied de injuria, and under that replication obtained a verdict for excess. Held on motion for new trial, that the plaintiff was at liberty to shew that the defendant's justification was not proved, although he had made no objection to it at the trial, and that he might abandon the ground which he had taken then, and

retain his verdict for want of proof of the justification.—Roddy *vs.* Moffat. Easter, 2 Vic.

In an action for an assault and battery, a conviction for the same assault under the petty trespass act must be pleaded and cannot be given in evidence under the general issue.—Heney *vs.* Simpson. Trinity, 1 & 2 Vic.

A plea of conviction under the petty trespass act, 4 Will. IV. ch. 4 to an action for an assault and battery, is not supported by proof of a conviction for an assault alone, and semble that a conviction under that statute for an act against the public peace, does not deprive the party injured of his right to a civil remedy. — Delong *vs.* McDonell. Easter, 2 Vic.

ASSEMBLY, (HOUSE OF)

The House of Assembly has the power of imprisoning persons guilty of contempt in answering or refusing to answer questions before a select committee.—Macnab *vs.* Bidwell. Easter, 2 Geo. IV.

ASSUMPSIT.

A. having a claim on Government for certain wild lands, gave a bond to B. to procure a patent for the same in B.'s name, on his promising to pay him a certain sum therefor, A. obtained the patent, and informing B. of it, requested payment, which was refused; A. then brought assumpsit for the value of the lands sold, and for services rendered in procuring letters patent to B. granting him certain lands in fee simple. Held that the action was maintainable.—Kilborn *vs.* Forester. Hil. 1 Will. IV.

Where an agreement under seal for the completion of certain work had been entered into by one of two plaintiffs, and the other who was not mentioned in the agreement sealed it also, and afterwards assisted in the work, and was recognized and paid by the defendant for whose benefit the work was done, as a joint contractor with the plaintiff mentioned in the instrument. Held that assumpsit was maintainable by both for the value of the work, an implied parole agreement having been substituted for the instrument under seal. —Ross, et al. *vs.* Tait. Hil. 7 Will. IV.

ATTAINDER.

The property of a person attainted for high Treason, is not forfeited until the attainder is complete.—Eastwood et al. *vs.* McKenzie. Hil. 2 Vic.

ATTACHMENT.

See also SHERIFF—ATTORNEY.

Award.—In order to bring a party into contempt for not paying money pursuant to an award, the original rule and other papers should be shewn to him at the same time as the copies are served.—Kent *vs.* Sumner. Trinity, 11 Geo. IV.

Cognovit.—An attachment will not be granted against a witness to a cognovit who refuses to swear to its execution, until a rule has been served on him, ordering him to do so, and he has disobeyed it.—Ham *vs.* Ham. Easter, 3 Will. IV.

Clerk of the Crown.—An attachment was granted against a Deputy Clerk of the Crown for having issued serviceable process without authority, and afterwards on his appearance in Term to answer interrogatories, the Court directed him to be dismissed from his office, and to pay the costs of the proceedings.—Rex *vs.* Fraser. Trinity, 3 and 4 William IV.

District Judge.—An attachment will not be granted against a Judge of a District Court for not obeying a writ of certiorari, unless it be shewn that he is acting contumaciously.—In re Judge, Niagara District Court. Hil. 4 Will. IV.

Limits.—A prisoner in custody for a contempt may have the benefit of the limits.—Rex. *vs.* Kidd. Hil. 6 Will. IV.

Second Attachment.—A second attachment was refused, until the costs of setting aside a former one had been paid.—Rex *vs.* Ruttan. Easter, 6 Will. IV.

Judge's order.—An attachment will not be granted on the order of a Judge at Nisi Prius, until such order is made a rule of Court.—Plumb *vs.* Miller. Hil. 7 Will. IV.

Judge's Order.—An attachment for non-payment of costs under a Judge's order, subsequently made a rule of Court, where a demand was made under the order, but not after it had become a rule of Court, was refused.—Culver *vs.* McDonell. Trinity, 7 Will. IV.

Affidavit.—An affidavit to set aside an attachment must be entitled on the Crown side, and not in the names of the parties to the suit.—Malloch *vs.* Morris. Trinity, 1 and 2 Victoria.

Costs.—Where a demand of costs to ground an attachment is made under a power of Attorney, it must be shewn that a copy of the affidavit of the execution of the power has been served.—Marcy *vs.* Butler. Easter, 2 Vic. Morrison *vs.* Lowden. Trinity, 2 and 3 Vic.

ATTORNEY.

Sheriff's fees.—An Attorney is liable to the Sheriff for fees on executing writs, and for services rendered for him in causes of his clients, without any special undertaking.—Jarvis *vs.* Washburn. Easter, 11 Geo. IV.

Costs.—The Court refused to order an Attorney to pay the costs of a suit on a bond to the limits, where he had signed the name of one of the obligees and executed the bond in his behalf, on a mere parole authority.—Leonard *vs.* Glendenman. Michs. 1 Will. IV.

Action.—It is no defence in an action against an Attorney for money received by him on account of a client, that the judgment on which the money was paid was obtained through the fraud of such client.—Williams *vs.* King. Easter, 1 Will. IV.

Action.—An Attorney has till the following Term to plead to a bill filed against him in vacation.—M'Canady *vs.* Foster. Easter 1 Will. IV.

Action. — An interlocutory judgment signed in vacation on a bill against an Attorney served the same vacation, although filed in Term, is irregular. — Fraser *vs.* Boulton. Michs. 2 Will. IV.

Action.—Where in an action against an Attorney all the proceedings subsequent to the filing of the Bill were set aside for irregularity with costs, and the plaintiff proceeded again without serving a new copy of the bill, the proceedings were again set aside, but without costs.—Fraser *vs.* Boulton. Michs. 2 Will. IV.

Client.—Where the promissory note of a Judge of a District Court was placed in the hands of an Attorney for collection, and he agreed to give the Judge credit on the note for fees payable by him for business done in the District Court, and did endorse a part on the note as payment, and subsequently the whole amount was paid by such fees, but the Attorney refused to credit any more than the sum first endorsed and afterwards absconded. Held in an action on the note, that the Judge could not give the payment by fees in evidence against the Plaintiff.—Ketchum *vs.* Powell. Easter, 3 Will. IV.

Bill of Costs.—The month required by 2 Geo. II, ch. 23 for the delivery of an Attorney's Bill before the issuing of process is a lunar and not a calendar month, and the day of the service of the bill is included in the computation, and an admission of such service endorsed on the copy of the bill by the defendant's Attorney for the purposes of trial, must be taken to admit an effectual service.—Berry *vs.* Adams. Michs. 5 Will. IV.

Fees.—In an action by an Attorney for his fees, he must prove the delivery of his Bill, although the defendant has suffered judgment by default.—Ridout *vs.* Brown, Hil. 5 Will. IV.

Action.—In an action against an Attorney, he should have four full days in term to plead, but he is too late to set aside an interlocutory judgment signed before the four days had expired, two months after such judgment, and after notice of assessment served, and an objection that there is not any date to a notice to plead, nor any statement that the plaintiff appears by Attorney will not been tertained.—Munro *vs.* King. Easter 5 Will. IV.

Fees.—Where an Attorney served his bill of costs on the 20th May, and the placita on the Nisi Prius Record were entitled of Trinity Term which commenced on the 16th June, not a lunar month after such service, but a memorandum was added to wit 11th July, and the plaintiff proved that his declaration was filed that day, but did not produce the writ. Held sufficient to entitle him to a verdict, and that if the writ were issued too soon, the defendant should shew it.—McMartin *vs.* Spafford. Michs. 6. Will. IV.

Attachment.—The Court will not proceed by attachment against an Attorney

on a charge of mal-practice, where his conduct has been merely inadvertent, and the party complaining has a remedy by action.—In re Stuart one, &c. Hil. 6 Will. IV.

Fees.—An Attorney's bill which contained some exorbitant charges was ordered for taxation, although it had been paid, and several months had elapsed since its delivery.—Doe Fraser *vs.* Eaglesum. Hil. 6 Will. IV.

Costs.—Where a plaintiff, an Attorney, brought an action of assumpsit and proved a cause of action to the amount of £20, he was allowed full costs, although the jury rejected the whole of his claim except three shillings.—King *vs.* Such. Hil. 6 Will. IV.

Articled Clerk.—An articled Clerk can serve only one year with the agent of the Attorney in this Province.—In re Gilkison. Hil. 7 Will. IV.

Fees.—An Attorney may maintain an action for his fees in a cause which he does not bring to a conclusion, if he can account satisfactorily for not proceeding. —Ford et al. *vs.* Spafford. Hil. 7 Will. IV.

Articled Clerk.—It was stated by the Court that where an articled Clerk carries on business for his master in a place where the master does not reside, that the time so spent will not be computed in his service.—In re McIntosh *vs.* McKenzie. Michs. 1 Vic.

Action.—The service of a summons to compute on the agent of the defendant, an Attorney, is sufficient.—Spragge *vs.* McMartin. Trinity, 1 & 2 Vic.

Articled Clerk.—When an Attorney's Clerk had lost his articles of clerkship, he was sworn in on an affidavit of the loss, and producing the usual certificate of service.—In re Loring. Michs. 2 Vic.

Arrest.—An Attorney, coming to Court in Term time on professional business, which has been disposed of, is not privileged from arrest in execution.—Stroubridge *vs.* Davis. Michs. 2. Vic.

Fees.—In an action by an Attorney for fees, proof by a copy made up from his books, after delivery to the defendant, is sufficient.—Hall *vs.* Shannon. Easter, 2 Vic.

Privileged Communication.—A communication made to an Attorney in his professional character, is privileged, although there is no suit pending concerning the subject matter, nor any contemplated at the time.—Battersby *vs.* Haycock. Easter, 2 Vic.

Costs.—An Attorney cannot proceed for his costs, after a plea of release puis darrien continuance, unless he establishes a clear case of fraud.—White *vs.* Boulton. Easter, 2 Vic.

Fees.—An order for the taxation of an Attorney's bill was refused, where it had been paid and acquiesced in.—Merden *vs.* Morgan. Easter, 2 Vic.

Articled Clerk.—An Attorney was struck off the rolls, where it was shown on affidavit, that during the entire period he was under articles, he was a salaried Clerk, attending a public office.—In re Ridout. Trinity, 2 & 3 Vic.

Action.—Whether a bill against an Attorney be filed in term or vacation, a demand of plea must be served during term or within four days after it, and he has four full days in term to plead.—Sherwood *vs.* Boulton. Michs. 3 Vic.

Action.—A demand of plea must be served in an action against an Attorney, a rule to plead and a notice to plead are not sufficient.—Hamilton *vs.* McDonald. Hil., 3 Vic.

AWARD—See ARBITRATION,

ATTACHMENT.

BAIL.

Exoneretur.—The Court will not grant leave to enter an exoneretur, where bail have surrendered their principal, without a certificate from the Sheriff to whom he was rendered.—Linley *vs.* Cheeseman. Hil., 10 Geo. IV.

Bail Piece.—Where there are two plaintiffs with the same surname, the non-repitition of the surname after the Christian name of each, in a bail piece, is only an irregularity, and will not warrant the plaintiff in taking an assignment of the bail bond.—Meighan and Meighan *vs.* Brown. Easter, 11 Geo. IV.

Justification.—The affidavit of justification of bail cannot be sworn before the defendant's Attorney.—Koyle *vs.* Wilcox. Trinity, 1 & 2 Will. IV.

Bail Piece.—A recognizance roll varying from the bail piece will be set aside for irregularity. — McDonell *vs.* Ruttan. Hil. 2 Will. IV.

Relief. — Bail are fixed, when eight days in full term have elapsed after the return of process against themselves, and the Court will not relieve them afterwards. McPherson et al. *vs.* Bail of Mosier. Easter, 2 Will. IV.

Ca. Sa.—It is no ground for setting aside proceedings against bail, that the Ca. Sagainst their principal has not been returned and filed.—Hugill *vs.* McCarthy et al. Easter, 2 Will. IV.

Bail Piece.—A bail piece may be entitled of the term in which bail is put in, although not the term in which the writ was returnable,and may be entered before the return day of the writ, but it should state in the margin the District in which the venue is to be laid, and if it do not, it is a nullity.—Ward *vs.* Skinner. Easter, 3 Will. IV.

Security. — Bail being perfected, the Court will not order an attachment obtained against a Sheriff for not bringing in the body, to stand as a security, where, although a trial has been lost, it has been without the default of the sheriff, and he swears the application is made for his own indemnity.—Ward *vs.* Skinner. Trinity, 3 & 4 Will. IV.

Justification.—Bail will be allowed to justify, by the affidavit made at the time of the acknowledgment, although an exception to them be entered, where nothing is shewn to repel such affidavit, nor to impeach their solvency.—Duggan *vs.* Derrick. Hil. 6 Will. IV.

Allowance.—A rule for the allowance of bail was refused, where it was shewn that, since their justification,one of the bail had absconded.—Billings,et al. *vs.* Loucks. Hil. 6 Will. IV.

Pleading.—A plea by bail, to an action on their recognizance, that they did not become bail, concluding to the country, is bad on special demurrer; and on pleas of nul tiel record to the judgment, and no Ca. Sa., a judgment varying in the Term from that stated in the declaration, and a Ca. Sa. in the form of action from that stated in the replication, constitute a fatal variance.—Burns *vs.* Grier. et al. Easter, 7 Will. IV.

Pleading.—A plea by bail, to an action on their recognizance, that after the issuing of the Ca. Sa. against their principal,the plaintiff gave notice to the Sheriff not to arrest him, is bad on general demurrer.—Burns *vs.* Donelly, et al. Easter 7 Will. IV.

Enrolment.—Where the recognizance is not enrolled until after nul tiel record pleaded, the plaintiff must pay the costs of the defendant's plea, and the defendant be at liberty to plead de novo.—Smith *vs.* Morton. Trinity, 7 Will. IV.

Render.—Bail have eight days in full Term after the return of process against themselves to surrender their principal,and the plaintiff is bound to stay the proceedings on receiving notice of the render, although the costs are not paid.—Ives *vs.* Robinson. Michs. 2 Vic.

Condition.—Semble since 4 Will IV ch. 5 sec. 1, a recognizance of bail conditioned to render the defendant to the Sheriff of a District, in which the venue is not laid, is not void. Billings et al. *vs.* Barry, et al. Easter, 2 Vic.

Justification.—Since statute 4 Will. IV. ch. 5, bail excepted to in vacation, must justify in vacation, and have not till the following term for that purpose.—McKenzie et al. *vs.* Macnab. Easter, 2 Vic.

Costs.—When bail surrender their principal within the time allowed after the return of process against themselves, they are not liable to costs.—Lewis *vs.* McDonald. Trinity, 2 and 3 Vic.

Costs.—Bail who have paid the costs of an action against themselves cannot recover them from their Principal as money paid; they must declare specially.—Shore *vs.* Burrill. Michs. 3 Vic.

BAIL BOND.

Alias Writ.—Where a defendant was arrested on an alias writ under 2 Geo. IV ch. 1, after having entered an appearance to serviceable process, and gave a bail

bond to the Sheriff, the bail bond was set aside with costs.—Douglass *vs.* Powell. Michs. 2 Will. IV.

Staying Proceedings.—The court will stay proceedings on a bail bond after judgment and execution on payment of costs, where the plaintiff has delayed for three years to proceed against the bail, and they will not keep the bail to terms accepted by them, when obtaining a Judge's order in vacation, where the order was abandoned immediately afterwards, and was never acted on.—Young *vs.* Shore. Hil. 2 Will. IV.

Staying Proceedings.—Before proceedings will be stayed in an action on a bail bond, bail above must be put in and perfected.—Gould *vs.* Birmingham. Michs. 4 Will. IV.

BARGAIN AND SALE—See DEED.

BARON AND FEME.

The husband must be a party to any deed aliening the real estate of a married woman, under the Provincial Statutes 43 Geo. III., ch. 5, and 59 Geo. III, ch. 3, and it is not sufficient for him to sign and seal the deed, he must be expressly named in it as a party.—Doe Bradt *vs.* Hodgkins. Michs. 2 Will. IV.

BATTERY—See ASSAULT AND BATTERY.

BILLIARD TABLES.

Semble that the Corporation of the City of Toronto has a right to suppress all billiard tables within its jurisdiction.—Rex *vs.* Inspector of Licenses, Home District. Michs. 5 Will. IV.

BILL OF EXCHANGE.

Where the plaintiffs, who were bankers, requested the defendant to draw two bills on England for their accommodation, which he did, and the plaintiffs indorsed and sold them here, giving the defendant a draft of the same amount payable in England, to meet them when due, and the defendant for that purpose transmitted the draft to the drawee of his bills, an officer in the Customs, by whom it was discounted before it became due, and the money placed by him with the public monies under his charge, from whence part of it was stolen, and in consequence one of the defendant's bills came back protested, and was paid by the plaintiffs. Held, that although it was an accommodation transaction, the drawee was the agent of the defendant, and not of the plaintiffs, and that the defendant was responsible to them for the amount of the bill.—Truscott, et al. *vs.* Billings. Trinity, 1 & 2 Vic.

It is not necessary to present a bill of exchange drawn, payable after date, for acceptance, until it is due; and when there has been no presentment at all, a promise to pay the amount of the bill will not be sufficient to charge the drawer, unless it be made by him with a knowledge of the default.—Richardson, et al. *vs.* Daniels, et al. Michs. 2 Vic.

Where a bill of exchange is made payable at a particular place in a foreign country, and there is no evidence of presentment there, nor of the law of that country on the subject, the necessity for presentment must be determined by the law, as it exists here.—Buffalo Bank *vs.* Truscott, et al. Michs. 2 Vic.

Parole evidence cannot be received to shew that a bill of exchange accepted, payable three days after sight, was not to be paid till a further time had elapsed.—Bradbury *vs.* Oliver. Hil. 2 Vic.

A commission of 2½ per cent. on drawing and accepting bills of exchange is usurious, and will not be allowed.—Bradbury *vs.* Holton. Easter, 2 Vic.

A notice that a foreign bill has been returned protested and unpaid, is a sufficient notice of non-acceptance; and it is not necessary to send a copy of the protest with the notice; and a foreign postmark on a letter is prima facie evidence of the time the letter was mailed. Ten per cent. damages, under 51 Geo. III. ch. 9, sec. 2, cannot be recovered on a foreign bill returned for non-acceptance; nor can re-exchange, unless declared for specially, although postage may, under the count, for money paid. — O'Neill *vs.* Perrin. Michs. 3 Vic.

BOND.

To debt on bond setting out the condition, and assigning breaches, the defendant craved oyer and demurred, and the plaintiff, having succeeded on the demur-

rer, entered judgment for the amount of the penalty in the bond and costs, and issued execution. The defendant then moved to set aside the proceedings, but the plaintiff had leave to amend by substituting an interlocutory, for the final judgment, and entering an award of venire to assess the damages, and inquire of further breaches, although three years had elapsed from the entry of the judgment.—Douglass *vs.* Powell. Trinity, 1 & 2 Will. IV.

Trover may be maintained by the obligee against the obligor of a bond, who has wrongfully torn off his seal, and damages be recovered to the amount of the penalty.—Bank U. C. *vs.* Widmer. Hil. 2 Will. IV.

Where, in debt on bond for the payment of money by two instalments, only one was due when process was issued, but the plaintiff assigned breaches for both, the time for the payment of the second having arrived before declaration. Held, that he could assess his damages on both breaches, and semble in such case the declaration is the commencement of the action. — Leach *vs.* Stevenson. Michs. 4 Will. IV.

To debt on bond with a condition, in which it appeared on oyer that the common conclusion, "then this obligation shall be void," had been omitted, the defendant pleaded, in avoidance, non-performance of a condition precedent, as if the bond had been regularly concluded, to which the plaintiff demurred generally. Held, that the plea was good.—Day *vs.* Spafford. Hil. 6 Will. IV.

Partial performance of the condition is no answer to an action on a bond, and a plea to debt on bond, with a condition to convey land in the life-time of a testator, brought by his executor, must negative the request of a conveyance by the heir or executor, as well as by the testator.—Hershey Adam *vs.* Warren. Hil. 7 Will. IV.

Where a bond is pleaded with a profert, the admission of its execution under a Judge's summons for that purpose, does not dispense with the necessity for its production at the trial.—Leslie *vs.* Leahy. Hil. 7 Will. IV.

Where, in a bond, with a condition to convey land, no time is fixed for such conveyance, but the times for the payment of the purchase money are stated, the payment of the money is not a condition precedent to the execution of the deed.—Wilson *vs.* Dickie. Easter, 7 Will. IV.

The obligor of a bond, with a condition for the conveyance of land, must prepare and tender the conveyance, unless the condition be to convey by such deed as the obligee shall require.—Harrison *vs.* Livingstone. Trinity, 1 and 2 Vic.

Where the defendant agreed to lend the plaintiff £2,000, to be advanced as it might be required, and received from the plaintiff a conveyance of lands to secure the advances, and gave back a bond reciting the agreement, and binding himself to reconvey the lands on the re-payment of the sums advanced on a certain day, and the defendant, before that day, made further advances to £10,000, and received timber, &c., on account to £7,000—Held that the bond was a continuing security, and that the defendant was not obliged to re-convey, on the payment of the £2,000, first advanced.—Wells *vs.* Ritchie. Easter, 2 Vic.

An obligor, who is called by a wrong name in a bond, but executes it by his right name, must be sued by the name in the bond.—Ketchum et al. *vs.* Brady. Michs. 3 Vic.

BOND TO THE LIMITS.

The plaintiff must assess his damages after interlocutory judgment, in debt on bond to the limits.—Gallagher *vs.* Strobridge. Easter, 11 Geo. IV.

A blank having been left in a bond to the limits, which was afterwards filled up with his consent, although not in his presence, held no variance on the plea of non est factum.—Leonard *vs.* Merritt. Hil. 1 Will. IV.

A bond conditioned that a debtor shall confine himself to the limits of a gaol, is void, if, at the time of its execution, the debtor was not in custody, nor on the limits, and where the defendant sets out the

condition on Oyer, and pleads non est factum, the plaintiff must suggest a breach before trial, and cannot take a verdict for the penalty, and suggest breaches afterwards.—Campbell *vs.* Lemon. Hil. 2 Will. IV.

To debt on a bond to the limits by the Sheriff's Assignee, it is a good plea, that after breach and before the assignment to the plaintiff, the Sheriff delivered up the bond to the debtor to be cancelled, but it is no answer, that the debtor was surrendered after breach, if the bond were not cancelled.—LeMesurier *vs.* Smith. Easter, 2 Will. IV.

In a declaration on a bond to the limits, given by a debtor in execution, it is necessary to shew the judgment, writ, and arrest of the debtor, and the execution of the bond while he was in custody, and the recital of these facts in the bond set out in the declaration, will not be sufficient.—Leonard *vs.* McBride et al. Michs. 3 Will. IV.

In a declaration on a bond to the limits, an averment that the Justices in Quarter Sessions assigned limits to the gaol is sufficient on general demurrer, and the bond is not avoided altogether, because part of the condition is contrary to the statute.—Stebbins *vs.* O'Grady et al. Easter, 2 Vic.

A bond to the limits may be taken on an attachment for the non-payment of money, and may be assigned.—Montgomery *vs.* Howland. Easter, 2 Vic.

An admission by a debtor on the limits, that he had gone beyond them, is not admissible to charge his sureties.—Freeland *vs.* Jones. Michs. 3 Vic.

Where, in a declaration on a bond to the limits, the condition set out was, that the debtor should not depart from the limits, and the defendant on Oyer showed the condition to be, that the debtor would remain on the limits until the debt was paid, or, he should be legally discharged from the limits, and demurred.—Held a fatal variance.—McGuire *vs.* Pringle. Michs. 3 Vic.

In an action on a bond to the limits, it should be shewn by express terms, and not merely by implication, that the defendant became bound, and where it did not expressly appear in the declaration, and no profert of any bond was made, a plea of nil debit was held good on demurrer.—Douglas *vs.* Murchison. Hil. 3 Vic.

BOUNDARY.

Twenty years' possession, according to a certain boundary line, will bar an ejectment, brought to disturb such boundary, unless a new survey can be made strictly in accordance with the provisions of 59 Geo. III. ch. 14.—Doe Morgan *vs.* Simpson. Trinity, 1 and 2 Vic.

BOUNDARY COMMISSIONERS.

Boundary line commissioners have no authority in cases of leaseholds, and in appeals from their decisions, the party appealing must bring his case before the court for argument by concilium.—Vanderlip *vs.* Mills. Hil. 3 Vic.

BUBBLE ACTS.

The Bubble Acts 6 Geo. I. ch. 18, and 14 Geo II. ch. 37, are not in force in this Province, and banks chartered by Acts of the Provincial Parliament could not come within the provisions of those Acts.—Bank U. C. *vs.* Bethune, and Bank of Montreal *vs.* Bethune. Easter, 5 Will. IV.

BYE LAW.

Where a statute gives Justices of the Peace power to make bye laws, and impose penalties for their infraction, they cannot, unless expressly authorised by the statute, levy such penalties by distress.—Kirkpatrick *vs.* Askew. Hil. 7 Will IV.

CANADA COMPANY—See CORPORATION.

CAPIAS AD RESPONDENDUM—See PROCESS.

CAPIAS AD SATISFACIENDUM.

The court will allow a Capias ad Satisfaciendum to issue on an affidavit, sworn before a Judge in Lower Canada, whose signature is verified by affidavit here.—Coit *vs.* Wing. Hil. 4 Will. IV.

A defendant is entitled to a writ of Capias ad Satisfaciendum for the costs of his defence.—Thomson *vs.* Leonard. Trinity, 4 and 5 Will. IV.

It is not necessary, in an affidavit made for the purpose of issuing a Capias ad Satisfaciendum by a plaintiff, who has

two christian names, to state the second, where his identity sufficiently appears, by the affidavit describing him as the above plaintiff.—Perkins *vs.* Conolly. Michs. 5 Will. IV.

It was considered no ground for setting aside an arrest on a Capias ad Satisfaciendum, that several terms had elapsed after the return of the executions against goods before the Capias ad Satisfaciendum issued.—Glynn *vs.* Dunlop. Hil. 5 Will. IV.

Where a plaintiff sued out bailable process, and, without executing it, took a cognovit, and entered common bail and judgment against the defendant, and arrested him on a Capias ad Satisfaciendum, without filing a fresh affidavit; the Capias ad Satisfaciendum and arrest were set aside with costs.—Brown *vs.* Bethune. Michs. 6 Will. IV.

Where one of two defendants had been arrested, and the other served, on mesne process, the court, after judgment, allowed a Capias ad Satisfaciendum to issue against both, with a direction to be executed only against the one who had been originally arrested.—McIntyre *vs.* Sutherland et al. Easter, 6 Will. IV.

The discharge of one of two defendants in execution on a joint judgment, operates as a discharge of both.—Fisher *vs.* Daniels et al. Easter, 2 Vic.

Where a writ of execution against goods had been issued, but not returned and filed within a year after judgment, a Capias ad Satisfaciendum issued after the year without a scire facias to revive the judgment, was set aside for irregularity.—Sewell *vs.* Thompson. Easter, 2 Vic.

CARRIER.

A forwarder is a common carrier, and is not liable for loss, arising from the act of God, or the King's enemies.—Smith *vs.* Whiting. Trinity, 4 and 5 Will IV.

The owners of a vessel mortgaged, and in possession of and navigated by the mortgagees, are not liable for the loss of goods shipped on such vessel, and if they were liable, although the form of action were case, yet as their liability would be founded on contract, and not custom, the acquittal of one defendant would discharge the rest.—Wilkes *vs.* Flint et al. Hil. 3 Will. IV.

It is sufficient to discharge the owner of a vessel, conveying goods from port to port, from liability arising from the non-delivery of part of those goods, to show that they were delivered by the master of the vessel at the port to which they were consigned, and notice given, during the usual business hours, to the consignee.—McKay *vs.* Lockhart. Hil. 6 Will. IV.

CASE—See ACTION.

CERTIORARI.

A writ of certiorari lies to remove orders of sessions, relating to the expenditure of the District rates and assessments, at the instance of the Attorney General, without notice.—Rex *vs.* Justices of Newcastle. Easter, 11 Geo. IV.

A writ of certiorari cannot be granted to remove a judgment for a defendant, from a District Court to the Queen's Bench, under 19 Geo. III. ch. 70 sec. 4, that statute applying only to judgments for plaintiff.—Gregory *vs.* Flanegan. Easter, 2 Will. IV.

A writ of certiorari will not be granted to remove proceedings from the District Court after verdict, although the Court are clearly of opinion, that admissible evidence has been rejected by the Judge of that Court, the proper course in such a case being to tender a bill of exceptions.—Tully *vs.* Glass. Easter, 3 Will. IV.

A writ of certiorari may issue in this Province under 19 Geo. III. ch. 70, to remove a cause from a District Court into the Queen's Bench, for the purpose of issuing execution into another District.—Baldwin et al. *vs.* Roddy. Easter, 3 Will. IV.

An attachment will not be granted against a Judge of a District Court, for not obeying a writ of certiorari, unless it be shewn that he is acting contumaciously.—In re Judge Niagara District Court. Hil. 4 Will. IV.

The Court will not direct how proceedings are to be carried on, after the removal of a cause from a District Court, by certiorari.—Copping *vs.* McDonell. Trinity, 6 & 7 Will. IV.

COGNOVIT.

A cognovit may be taken in a cause although no process has issued, and a defendant, who has given a cognovit without process, with a stay of execution to a certain day, may be arrested on a capias ad respondendum before that day has arrived, the taking of a cognovit not depriving the plaintiff of his usual remedies.—Walton *vs.* Hayward. Easter, 2 Will. IV.

An attachment was refused against a witness to a cognovit, who would not swear to its execution, no order or rule of Court having been made for him to do so. —Ham *vs.* Ham. Easter, 3 Will. IV.

The Court refused to allow judgment to be entered on a cognovit, more than fifteen years old, where although it was sworn that a large debt was due, yet it appeared that the plaintiff had once accepted from the defendant, an assignment of property and given a discharge of the action, although the property proved unproductive.—Grant *vs.* Exors. of McIntosh. Easter, 5 Will. IV.

Where a cognovit was given with a stay of execution to a future day, and a memorandum was endorsed, deferring the payment of a part of the debt for a longer time, and at the day judgment was entered for the whole amount—the Court restrained the levy according to the terms of the memorandum, with costs. — Fisher et al. *vs.* Edgar. Easter, 6 Will. IV. — Alexander *vs.* Hervey. Trinity, 7 Will. IV.

Where a debtor in custody executes a cognovit, it is not necessary, that an Attorney should be present on his behalf.—Lodor *vs.* Heathcote. Hil. 7 Will. IV.

Where there are several defendants, and a cognovit entitled in the cause against all, is executed by only some, judgment cannot be entered against these latter alone.—Roach *vs.* Potash et al. Trinity, 2 & 3 Vic.

Where a blank cognovit with the plaintiff's Attorney's name indorsed, was executed by the defendant, but neither the Attorney nor any of his Clerks, was present at the execution, the cognovit was set aside with costs.—Jones *vs.* Barnes. Trinity, 7 Will. IV.

After a cognovit given by a principal and his sureties jointly, the Court will not set aside a judgment entered on it against all, because time has been given to the principal, without the consent of the sureties.—Mowat *vs.* Switzer et al. Michs. 3 Vic.

COMMISSION.

The return of a commission to examine witnesses, issued to a foreign country, under 2 Geo. IV. ch. 1, under the hand, but not the seal, of the Commissioner, is sufficient; and the affidavit of the execution of the Commission may be sworn by the Commissioner himself.—Beach *vs.* Odell. Michs. 5 Will. IV.

When one of the parties to a suit has obtained a commission to examine witnesses, the other party has a right to call for and make use of it at the trial, and semble that an order for the publication may be obtained before trial.—Gordon *vs.* Fuller. Trinity, 6 & 7 Will. IV.

The signature and seal of the chief magistrate of a town in a foreign country, to an affidavit proving the due execution of a commission to examine witnesses. issued from this court, are to be considered genuine without further proof.—Doe Lemoine *vs.* Raymond. Michs. 7 Will. IV.

COMMON COUNTS

A plaintiff, who fails on the special counts of his declaration, will not be allowed afterwards to resort to the common counts.—Holden *vs.* McCarthy. Easter, 6 Will. IV.

CONSIDERATION.

The words "value received," in an agreement to the following effect, "I promise to pay A. B. or bearer £25 value received, to be paid in merchantable wheat at market price," import a debt due, and are prima facie evidence of a consideration, and such an agreement may be shewn, under the counts for money had and received, and the account stated.—Waddle *vs.* McCabe. Easter, 4 Will. IV.

CONTRACT.

Where there was a written contract fixing the price of certain work. Held that in an action to recover compensation

for such work, the contract must be produced.—Wallace *vs.* Masson. Easter, 6 Will. IV.

CONTRIBUTION.

One of several defendants in assumpsit, who has paid the whole amount of the damages under an execution, is entitled to recover contribution from the other defendants, and in an action for such contribution, the regularity of the judgment in the original action cannot be questioned, and it is not necessary to shew any notice of the execution, nor demand of the money, before action brought. — Wood. ruff *vs.* Glassford. Easter, 5 Will. IV.

CONVICTION.

See also Assault and Battery.

A conviction, under 40 Geo. III. ch. 4 for selling spirituous liquors without licence, was quashed because the information stated that "the defendant was in the habit of selling spirituous liquors without licence" without charging any specific offence, and not shewing time nor place, nor that the liquors were sold by retail, and also, because the conviction directed the defendant to pay the costs of the prosecution, without specifying the amount.—Rex *vs.* Ferguson. Trinity, 3 and 4 Will. IV.

A conviction substantially defective cannot be amended.—Regina *vs.* Ross. Hil. 3 Vic.

A conviction under a bye law must shew the bye law, that the Court may judge of its sufficiency.—*Ib.* Michs. 3 Vic.

CORPORATION.

A stockholder is not entitled as a matter of right to inspect the Stock Book or other Books of a Bank, nor will the Court, although they have the power, grant a mandamus for that purpose, unless some special ground be disclosed to warrant it. —In re Bank U. C. Hill 10 Geo. IV.

Process to compel the appearance of the Canada Company, could not be served on the Commissioners in this Province.—Cooper *vs.* the Canada Company. Easter, 1 Will. IV.

A foreign Corporation, such as a Bank, cannot maintain an action, upon promissory notes received and discounted by them, in the course of Banking business in the Province, although they may maintain an action for money had and received to their use, against the person for whom such notes were discounted, and to whom money was advanced upon them.—Bank of Montreal *vs.* Bethune. Hil. 6 Will. IV.

Where a corporation had entered into a contract under seal with the plaintiff, for the performance of certain work, which was afterwards departed from by their order, with the consent of the plaintiff.—Held that assumpsit would lie for the value of the work done under the substituted contract.—Davis *vs.* Grand River Navigation Company. Michs. 2 Vic.

A corporation may maintain assumpsit on an executory, as well as on an executed consideration, where the contract is in their usual course of business.—Kingston Marine Railway Company *vs.* Phillips.—Michs. 3. Vic.

COSTS.

Of the day.—The rule for costs of the day for not proceeding to trial, is absolute in the first instance.—Chisholm *vs.* Simpson. Michs. 10 Geo. IV.

Full Costs.—The master is not to refuse to tax full costs, merely because the amount of the verdict is within the jurisdiction of the District Court, although the Judge, who tried the cause has not certified.—McMurray *vs.* Orr. Michs. 10 Geo. IV.

Full Costs.—The plaintiff was not allowed full costs, where in an action of covenant he recovered only £2, and the Judge did not certify.—Gardner *vs.* Stoddard. Easter, 11 Geo. IV.

Full Costs.—Where the Plaintiff and Defendant, and the Plaintiff's witnesses, resided in different Districts, full costs were allowed on a cause of action within the Jurisdiction of the District Court.—Hugill *vs.* Driscoll. Michs. 1 Will. IV.

Full Costs.—A certificate for full costs on a verdict, which is for an amount within the Jurisdiction of the District Court, must be moved for immediately after the trial.—Falls et al. *vs.* Lewis. Easter, 1 Will. IV. Patton *vs.* Williams. Hil. 3 Vic.

Special Jury.—The costs of a special Jury, are costs in the cause, and not costs of the day.—Whitehead *vs.* Brown. Hil. 2 Will. IV.

Full Costs.—Where the amount of a promissory note, originally beyond the jurisdiction of the District Court, had been reduced within it, by payments after action brought, the plaintiff was allowed full costs.—Kilborn *vs.* Wallace. Michs. 3 Will. IV.

Full Costs.—Where one of the plaintiff's was the Judge of the District Court, of the District in which the defendant resided, full costs were allowed, although the cause of action was within the District Court jurisdiction.—Jones et al. *vs.* Wing. Hil. 3 Will. IV.

Full Costs.—A plaintiff is not entitled to full costs as a matter of right, where he recovers, after judgment by default, an amount apparently within the jurisdiction of the District Court, as the ninth rule of Court of Easter Term, 11 Geo. IV, in such case, requires the order of the Court, or of a Judge, for such taxation.—McGill *vs.* Stull; Ferrie et al. *vs.* Young. Easter, 3 Will. IV.

Of the day.—Costs of the day were allowed to a defendant, who, by agreement with the plaintiff, accepted short notice of trial, and the plaintiff did not proceed to trial—pursuant thereto.—Harris *vs.* Hawkins. Easter, 3 Will. IV.

Of the day.—Where the plaintiff, having given notice of trial, did not enter his record with the Clerk of assize in time, but the defendant notwithstanding agreed to go to trial if he were ready, and after having detained the plaintiff's witnesses more than a week, at last determined not to go to trial, he was refused the costs of the day.—Crawford *vs.* Cobbledike. Michs. 5 Will. IV.

Full Costs.—Where there are issues in law and fact, and a venire as well to try the issues as assess the damages, and a verdict is rendered for the plaintiff, for an amount within the jurisdiction of the District Court, a certificate for costs must be applied for at the trial, and an order cannot be made by a Judge, as in cases of assessments after judgment by default, for the taxation of such costs.—Mahony *vs.* Zwick. Hil. 5 Will. IV.

Arbitration.—Where a cause is referred to arbitration by order of Nisi Prius, and the arbitrators award a sum within the jurisdiction of the District Court, the Court or a Judge may grant an order for full costs, under the ninth general rule of Easter term, 11 Geo. IV.—Elmore *vs.* Colman. Michs. 6 Will. IV.

Of the day.—Where a cause, not ready in its turn for trial, was put to the foot of the docket, with the consent of the defendant, and was not tried afterwards, costs of the day were refused.—Bank U. C. *vs.* Covert et al. Michs. 6 Will. IV.

Of the day.—Where the plaintiff's Attorney sent notice of countermand of trial to his agent in town, but it arrived too late for service, and the defendant's witnesses attended for the trial. Held that the expense of such witnesses was rightly allowed in the costs of the day.—Spafford *vs.* Buchanan, Michs. 6 Will. IV.

Attorney.—Where a plaintiff, an Attorney, brought assumpsit, and proved a cause of action to £20, he was allowed full costs, although the Jury rejected all his claim but three shillings.—King *vs.* Such. Hil. 6 Will. 4.

Set off.—Where a defendant put off a trial on payment of costs, and never having paid those costs, at a subsequent trial obtained a verdict. Held that those costs, could not be set off against the defendants general costs, there being no affidavit of the defendant's insolvency.—Potts *vs.* Doyle. Easter 6 Will. IV.

Court of Requests.—Where a verdict was taken subject to a reference, and the arbitrators awarded £10, reducing only the price and not the items of the account for the recovery of which the action was brought, a suggestion to deprive the plaintiff of costs under the Court of Requests Act was refused.—Stratford *vs.* Sherwood. Trinity, 6 and 7 Will. IV.

Breach of promise of Marriage.—In an action for breach of promise of marriage, one shilling damages will carry full costs.—Jeffery *vs.* Lawrence. Michs. 7 Will. IV.

Full Costs.—If a Judge at Nisi Prius orders a certificate for full costs, on a verdict apparently within the jurisdiction of the District Court, it may be drawn up at any time.—Linfoot *vs.* O'Neill. Michs. 7 Will. IV.

Full Costs.—Full costs will not be allowed on a cause of action, within the jurisdiction of the District Court, unless the cause of action arose in the District in which the plaintiff resides, or the defendant removed from the District in which the action accrued, before action brought. —Ketchum *vs.* Crysler. Hil. 7 Will. IV.

Several Issues.—Where there are issues in fact and in law, and the issues in fact and one issue in law are in favour of the plaintiff, and an issue in law in bar of the action in favor of the defendant, the plaintiff is entitled to the costs of the trial, and of the pleading determined in his favour, and the defendant to the general costs of the cause.—Davis *vs.* Davis. Hil. 7 Will. IV.

Of the day.—The defendant is entitled to costs of the day, where the plaintiff does not enter his cause for trial on the commission day of the Assizes, although he offers to enter it subsequently, which the defendant refuses to allow.—O'Neill *vs.* Barnhart. Hil. 7 Will. IV.

Full Costs.—Where the plaintiff's claim is within the jurisdiction of the District Court, it is no ground for a certificate for full costs, that the defendant's set off could not be tried in the District Court.—Gooderham *vs.* Chilver. Easter, 7 Will. IV.

Full Costs.—Full costs were allowed on a cause of action within the jurisdiction of the District Court, where there were several defendants residing in different Districts.—Jones et al. *vs.* O'Sullivan. et al. Hil. 3 Vic.

Full Costs.—Where the amount of a promissory note, originally beyond the jurisdiction of the District Court, had been reduced within it by payments before action brought, full costs were refused.—Donelly *vs.* Gibson. Hil. 2 Vic.

Rule.—Where an application is not fully met, although sufficient is shewn for the discharge of the rule, costs will be refused.—Harvy *vs.* Kay. Easter, 2 Vic.

Full Costs.—Full costs were allowed on a promissory note for £10, where the defendant left the District where he made the note, and was residing in another.—Perrin et al. *vs.* Carson. Trinity, 2 and 3 Vic.

Several Issues.—Where the defendant took issue on some of the counts of the plaintiff's declaration, and demurred to the rest, and judgment was against the demurrer, but the issues were found for him. Held that he was entitled to the costs of those issues —Sheldon *vs.* Hamilton. Michs. 3 Vic.

Security for.—A plea in abatement filed by a defendant, pending a rule nisi for security for costs, does not operate as a waiver of that rule.—Hastings *vs.* Champion et al. Michs. 3 Vic.

Full Costs.—Full costs were refused on a promissory note under £40, where the plaintiff resided in the United States.—Sawyer *vs.* McDonell. Trinity, 7 Will. IV.

Of the Day.—Costs of the day were refused, where after notice of trial given, the defendant obtained leave to withdraw his plea, and pleaded de novo, and the plaintiff did not proceed to trial — the Court considering a new notice necessary. —McMillan *vs.* Fergusson. Michs. 2 Vic.

Plea in abatement.—Where the plaintiff succeeds on a demurrer to a plea in abatement, he cannot recover the costs of the demurrer under 7 Will. IV. ch. 3, until the termination of the suit.—Richmond et al. *vs.* Campbell. Hil. 2 Vic.

COVENANT.

In covenant for title, the breaches assigned were, want of seisin in fee, and an eviction by a stranger, alleged in the declaration to be entitled, to which the defendant pleaded a seisin in fee in himself Held that on the plaintiff proving an eviction by the stranger, without shewing his title, it was incumbent on the defendant to give evidence of a seisin in himself.—Vary *vs.* Muirhead. Easter, 1 Will. IV.

Where to a declaration in covenant for title generally, and breach that the defendant had no title, the defendant pleaded a seisin in fee. Held that the issue lay on

him, and that he must show such seisin by proof of actual possession at some time, as prima facie evidence of his estate in fee, although the plaintiff offered no evidence in support of his breach. But the rule is otherwise, where the covenant is only against the party's own act.—McKinnon *vs.* Burrows. Easter, 3 Will. IV.

A. authorized by Government to settle a Township, covenanted with B. that he would allot him an hundred acres therein, for which he would procure a deed from the Crown, as soon as the settlement duties were performed, and B. covenanted with A. that he would pay him a bushel of wheat per annum, for every acre of land cleared, after he had been in possession of the Lot for three years. Held that A. might sue for the rent, after B. had been in actual possession for three years, although no deed to B. had been granted by the Crown. — McNab *vs.* McFarlane. Michs. 4 Will. IV.

Where a purchaser mortgages the lands purchased to his vendor, to secure the purchase money, he cannot, during the continuance of the mortgage, sue the vendor for breach of title.—Huyck *vs.* McDonald. Michs. 4 Will. IV.

In an action for breach of covenant of good title, a plea that the defendant was the rightful owner, &c., and that the plaintiff has had possession since conveyance made by the defendant, and never has been evicted, is bad on demurrer.—Vandeburgh *vs.* Vanaletine. Hil. 7 Will. IV.

CRIMINAL INFORMATION.

A criminal information against a magistrate was refused, where the affidavits on which the motion was made were entitled, and more than two terms had elapsed since the act done, no notice having been given to the magistrate of the intention to move, and the motion being made too late to allow him to answer the same Term.—Busteed *vs.* Scholfield. Michs. 5 Will. IV.

Where a party on moving for a criminal information for a libel, swears that the libel was published of him, and in his affidavit sets out the libel, which does not charge him in express terms, nor is made to refer to him by inuendo, the Court will grant a rule, and a verified copy of the letter containing the libel is sufficient to move upon, without the production of the original.—Regina *vs.* Crooks. Michs. 3 Vic.

A criminal information must be signed by the master of the Crown office.—*Ib.* Hil. 3 Vic.

CRIMINAL LAW.

Bail.—The Court refused to discharge a prisoner brought up on Habeas Corpus, charged with having murdered his wife in Ireland, communications having been made by the Provincial to the Home Government on the subject, and no answer received, and the prisoner having been in custody less than a year, and bail in such a case will not be allowed, until a year has elapsed from the time of the first imprisonment, although no proceedings have in the mean time been taken by the Crown. —Rex *vs.* FitzGerald. Michs. 4 Will. IV.

Bail.—A prisoner, in custody for grand larceny, may be admitted to bail.—Rex *vs.* Jones et al. Michs. 3 Will. IV.

Bail.—A prisoner charged with murder may in some cases be admitted to bail, and on an application for bail, the Court may look into the information, and if they find good ground for a charge of felony, may remedy a defect in the commitment, by charging a felony in it.—Rex *vs.* Higgins. Hil. 5 Will. IV.

Sentence.—A criminal, convicted at a Court of Oyer and Terminer of a capital felony, may be brought up to the Court of Queen's Bench for sentence.—Rex *vs.* Kenny. Michs. 7 Will. IV.

CROWN GRANT.

A Grant from the Crown must be by matter of record under the Great Seal, and an exemplification under the Great Seal, of a Grant invalid in its inception, will not have the effect of making such grant valid by relation, from its commencement.—Doe Jackson *vs.* Wilkes. Easter, 5 Will. IV.

Evidence is admissible, to show that the person named in a grant from the Crown, is not the person who was intended to take.—Doe Baker *vs.* Gould. Hil. 6 Will. IV.

Where a lessee under the Crown, gave notice of his lease, to a person who had

been in possession of the land leased without licence, before the lease was granted. Held that without actual entry he might maintain tresspass against the intruder, for cutting down timber after such notice. —St. Leger *vs.* Manahan. Easter, 6 Will. IV.

Where a party relies on a grant from the Crown in making title, he should procure an exemplification, if the original be so mutilated, that its contents cannot be accurately ascertained.—Goodtitle dem. Synder *vs.* Barker. Michs. 7 Will. IV.

Where the number of acres mentioned in a grant from the Crown, does not correspond with the quantity of land according to the description in the grant, the description will control.—Doe Manning *vs.* Fergusson. Hil. 2 Vic.

CURRENCY—See ACCOUNT STATED.

DAMAGES.

Trespass lies for the sale of property seized as a distress, and allowed to remain on the premises more than five days after the seizure, not being in the custody of the Bailiff, but the full value of the property cannot be recovered.—Thompson *vs.* March et al. Hil. 2 Will. IV.

In an action for breach of covenant for good title, no damages can be recovered for improvements or the increased value of the land, the purchase money and interest forming the measure of damages.—McKinnon *vs.* Burrows. Trinity, 4 and 5 Will. IV.

Where a verdict would be conclusive of the parties' rights, the smallness of the damages is no objection to setting it aside. —Soper *vs.* March. Hil. 6 Will. IV.

Where A. purchased a lease from B. and B. covenanted with him to re-purchase at the end of three years, for a greater price than he paid, and after the three years had expired, A. tendered an assignment of the lease, which B. refused. Held that in an action on the covenant, A. was entitled to recover as the amount of damages, the price agreed on by B. for the re-purchase.—Gibson *vs.* Cubitt. Easter, 2 Vic.

DEBT.

Debt lies to recover penalties under the Imperial Statute 6 Geo. IV. ch. 114, and in a qui tam action under that Statute which gives the penalty one-third to the King, one-third to the Lieutenant Governor, and one-third to the informer, the Court refused to arrest the judgment, on the ground that the plaintiff claimed the penalty for himself and the King only.—Jones q. t. *vs.* Chase. Hil. 1 Will. IV.

DECLARATION—See PLEADING-PRACTICE.

DEED.

Registry.—Where A. conveyed in fee to B. and died, and after his death, his heir conveyed the same lands in fee to C., whose deed was registered before the deed to B.: Held, that C.'s deed, being first registered, secured him the title, although he had notice of the deed to B.—Doe *vs.* Mitchiner. Easter, 1 Will. IV.

Registry.—The Registry Act does not apply where no deed has been previously registered, so as to make a subsequent registered deed valid against a prior unregistered one.—Doe Henessy *vs.* Myers. Easter, 3 Will. IV.

Registry—Where a subsequent deed was registered first, a prior one from the same party was held fraudulent and void, although its registry had been prevented by the fraud of the subsequent purchaser, he having in the mean time conveyed to a third party for a valuable consideration without notice.—Doe Nellis *vs.* Mattock. Easter, 2 Will. IV.

Bargain and Sale.—The registry of a deed of bargain and sale, relates back to the time the conveyance was made, so as to give the purchaser a good title from that period.—Doe Spafford *vs.* Brown. et al. Easter, 3 Will. IV.

Construction.—Where, in a deed, a certain quantity of land, and half of a saw-mill thereon erected, were conveyed, and the description of the premises covered the whole site of the mill: Held, that the express words must control the operation of the deed, and that the vendee was entitled to only half of the mill.—Doe Miller *vs.* Dixon. Hil. 5 Will IV.

Bargain and Sale.—The Registry Act does not apply where there has been no previous registered deed; and since Stat. 4, Will IV. ch. 1, sec. 47, a deed of bargain and sale does not require registry nor

enrolment, to make it a valid conveyance. —Doe Adkins *vs.* Atkinson, Easter, 5 Will. IV.

Fraud.—A Court of Law has power to set aside a deed, where a Jury finds that actual fraud has been practised in obtaining it; and although mere inadequacy of price is no ground for impeaching a conveyance, yet, when taken in connection with the mental imbecility of the party executing it, it goes strongly to prove fraud.—Doe Jones *vs.* Capreol. Trinity, 5 & 6 Will. IV.

Bargain and Sale.—A deed poll will operate as a bargain and sale; and the Stat. 4, Will. IV. ch. 1, sec. 47, has a retrospective operation, so as to make deeds of bargain and sale executed before the act, valid without registry.—Rogers, et. al *vs.* Barnum. Trinity, 6 & 7 Will. IV.

Presumption.—Where a conveyance ought to have been made, the Court will presume that one has been made after a peaceable possession for twenty years.—Doe Willson, et. al *vs.* Wessells. Trinity, 6 & 7 Will. IV.

Registry.—The certificate of registry indorsed on a deed, is conclusive of the registry, and cannot be impeached by evidence that it has been irregularly done. —Doe Russell *vs.* Gillett, Michs. 3 Vic.

DEMURRER—See PLEADING-PRACTICE.

DEVASTAVIT—See EXECUTOR & ADMINISTRATOR.

DEVISE.

The words, in a Will, "I have already given to my son, John, lot number one," do not constitute a devise.—Doe Smith *vs.* Meyers. Hil. 2 Will. IV.

Semble, that a devise of lands to the testator's wife for life, to be at her full and free disposal to whom and whensoever she pleases, and out of which the testator's just debts are to be paid, gives an estate in fee, and not for life, with a power of sale.—Doe Humberstone *vs.* Thomas. Hil. 3 Will. IV. Easter, 4 Will IV.

Where a testator, after devising to his wife, for life, all his real estate, stated the lots of land of which it was composed, and amongst others the front half of a lot, of which only the rear half belonged to him: Held, that the wife took a life estate in the rear half, under the general terms of the Will.—Doe Taylor *vs.* Peterson. Easter, 4 Will. IV.

Infancy is not an inevitable difficulty within the fifteenth section of the Registry Act, so as to preclude the necessity of an infant devisee, registering the Will within six months from the death of the devisor, to avoid a conveyance by the heir at law. —McLeod *vs.* Truax. Hil. 7 Will. IV.

Where a testator had bound himself by bond to pay to his mother £12 10 0 annually, and devised part of his lands to his brothers, on condition that they should pay to his mother £12 10 0 per annum, and pay all his just debts, and made them his Executors: Held, that at law the legacy could not be considered as a satisfaction of the annuity on the bond, and that the mother was entitled to both.—Cole *vs.* Cole, Easter, 2 Vic.

A devise to trustees to convey gives a fee-simple in joint tenancy, without words of inheritance.—Doe Berringer *vs.* Hiscott, —Michs. 3 Vic.

Where a testator devised lands to his daughter without words of inheritance, and devised the rest of his estate, except that devised to his daughter, to his sons in fee: Held, that the daughter took a fee simple in the lands devised to her.—Doe Stevenson *vs.* Hainer. Michs. 3 Vic.

A devise "to a son of the testator and his heirs forever, and in failure of male heirs, lawfully begotten by him, to the heir at law of another son," gives an estate tail to the first son; and where the devise was of lands of the Crown, of which the testator was merely the nominee, but after his death, a grant issued for them to the first son and his heirs, to the uses of the will of the testator: Held, that the will should be construed as if the testator had possessed the legal estate, and that as the first-named son was only tenant in tail, the lands could not be sold in the hands of his Executors for his debts.—Doe Butler *vs.* Stevens. Michs. 3 Vic.

DEVISEE.

A purchaser at sheriff's sale of lands, sold on an execution against a devisee, takes in preference to a purchaser on a

subsequent execution, though prior judgment, against the Executors of the testator.—Doe Auldjo *vs.* Hollister. Easter, 2 Vic.

DISCLAIMER.

A disclaimer by an Executor, who is also a trustee under the will, does not divest him of his estate as trustee.—Doe Boyer *vs.* Claus. Easter, 3 Will IV; Doe Berringer *vs.* Hiscott. Michs. 3 Vic.

DISTRESS.

A distress may be made for rent, for a sum certain, payable in produce at the market price, and such distress may be sold.—Thompson *vs.* March. et al. Hil. 2 Will. IV.

Trespass lies for the sale of property seized as a distress, and allowed to remain on the premises more than five days after seizure, but the full value of the property cannot be recovered.—*Ib.*

A distress made more than six months after the expiration of a tenancy, is illegal, and a continuation of the tenancy will not necessarily be implied, from the party's remaining in possession of the premises, without any act to shew the nature of the holding.—Soper *vs.* Brown. et al. Hil. 3 Will. IV.

In case for an irregular distress, if there were any irregularity, as if there were no appraisment, the plaintiff is entitled to a verdict for nominal damages, although no damages whatever be proved.—Maguire *vs.* Post. Hil. 6 Will. IV.

Where a landlord distrained for rent due, and also at the same time for rent not due: Held, that as the distress was legal in its inception, but excessive, that case, and not trespass, was the proper remedy. —Kendrick *vs.* Lee. Michs. 3 Vic.

DISTRICT COURT.

See also Costs.

In justifying an arrest under mesne process issued out of the District Court, it must be stated that an affidavit of debt for a sum certain was made and filed, and a replication that no such affidavit was made and filed, does not contain a negative pregnant. — Ferriset al *vs.* Dyer. Hil. 6 Will. IV.

A Certiorari cannot be granted to remove a judgment for a *defendant* from a District Court to the Queen's Bench.—Gregory *vs.* Flanagan. Easter, 2 Will. IV.

A writ of Certiorari may issue under 19 Geo. III. ch. 70, to remove a judgment from a District Court to the Queen's Bench, to issue Execution into another District.—Baldwin et al. *vs.* Roddy. Easter, 3 Will. IV.

An attachment will not be granted against a District Court Judge for not obeying a writ of Certiorari, unless it be shewn that he is acting contumaciously. —In re Judge Niagara District Court. Hil. 4 Will. IV.

Where a Judge's order is necessary to hold to bail, an arrest cannot be made in the District Court.—Ferris *vs.* Dyer et al. Hil. 6 Will. IV. Smith *vs.* Jarvis. Hil. 3 Vic.

DOWER.

In dower the plea of alien ne may be pleaded in bar, and a replication thereto need not state a venue to the place of birth within the allegiance, nor state of what parent nor when the demandant was born.—Robinet *vs.* Lewis. Hil. 10 Geo. IV.

The Court refused to arrest the judgment, because the tenant in dower was stated in the declaration to have been *attached*, instead of *summoned*.—*Ib.* Easter, 11 Geo. IV.

In dower a suggestion may be entered after final judgment, that the husband died seized of lands, and enquiry shall go concerning the damages since the death, although the tenant is the alienee of the heir.—*Ib.* Trinity, 11 Geo. IV.

After judgment of seizin in dower, on a writ of enquiry the mesne value of the land, between the death of the husband and the obtaining judgment, should be assessed; the demandant may also assess as damages the amount of her taxable costs in obtaining judgment of seisin, executing the writ of Hab. fac. seisinam, and her necessary travelling expenses incurred in prosecuting the suit, and her residence on the premises in the family, and at the expense of the heir at law for part of the time between the death of her husband and her recovery of judgment, is not

admissible in evidence as a set off to her damages, though proper to go to the Jury in mitigation.—*Ib.* Hil. 1 Will. IV.

A writ of Capias ad respondendum is not the first or original process in dower. —Phelan *vs.* Phelan. Easter, 1 Will. IV.

An infant demandant may sue in dower, and if an infant tenant be sued, the parol is not allowed to demur.—*Ib.*

In dower a plea of non-tenure is not necessarily a plea in abatement, and it may be pleaded either to part or to the whole of the lands demanded, and where a plea states that the husband devised certain lands to the demandant in bar and satisfaction of dower, and that she agreed to the devise, it is sufficient, without setting out the words of the devise, aliter, where the devise is not in express terms in bar of dower.—Breakenridge *vs.* King. Easter, 5 Will. IV.

In dower unde nihil habet the writ of grand cape must be served fifteen days before the return.—Richardson *vs.* Frazer et ux. Hil. 6 Will. IV.

It is not necessary to serve the summons in dower on the tenant on the premises. Honsburg *vs.* Fritz. Hil. 6 Will. IV.

In dower the demandant is entitled to damages only when her husband died seized, and under the plea of ne unques seisin, possession by the husband is prima facie evidence of a seisin in fee.—Lockman *vs.* Nesse. Easter, 7 Will. IV.

If a writ of dower be served no proclamations are necessary under 31 Eliz. ch. 3. — Bissonett et ux *vs.* Radenhurst. Michs. 1 Vic.

EASEMENT.

An easement can only be granted by deed, and if given by parol may be revoked at any time.—Crysler *vs.* Creighton. Easter, 2 Vic.

EJECTMENT.

Amendment—An amendment in a declaration in ejectment, in the name of the Township in which the lands, for which the action was brought, were situated, was refused.—Doe *vs.* Roe. Easter, 11 Geo. IV.

Evidence of Pedigree.—In ejectment between a person claiming as heir, and a stranger, very slight evidence of pedigree was allowed to go to the Jury.—Doe *vs.* Chisholm. Trinity, 11 Geo. IV.

Judgment.—Judgment cannot be entered against the casual ejector, until four days have elapsed from the time the rule for judgment nisi is taken out of the Crown office. — Doe Harley *vs.* Roe. Trinity, 1 and 2 Will. IV.

Consent Rule.—Where the lessor of the plaintiff claimed the land in question as part of one Lot, and the tenant claimed it as part of another Lot, the tenant was allowed to enter into the consent rule without confessing possession of the premises in the declaration.—Doe Canada Company *vs.* Roe. Trinity, 1 and 2 Will. IV.

Crown Lease.—A lessee of the Crown, for a valuable consideration, verbally assigned his lease to B. who went into possession of the lands in the lease, and after some years died in possession, having received the original lease from A., A. afterwards died, and the plaintiff his administrator brought ejectment against the defendant B.'s administrator. At the trial the plaintiff put in an exemplification of the original lease, and the letters of administration to him, and the defendant, having proved the facts as above, and that after B.'s death the lease had been taken out of B.'s trunk, and that the plaintiff had since stated it was in his possession, gave in evidence a notice to produce the lease, which was not then done, and at the close of the defence, the plaintiff produced the lease, and the Jury found for the defendant. Held on motion for a new trial, that the Jury were justified in presuming a legal assignment of the lease under the circumstances, and the rule was refused. —Doe Murphy *vs.* Mulholland. Trinity, 1 and 2 Will. IV.

Mortgage.—A purchaser at sheriff's sale of lands sold on a judgment and execution, subsequent to a mortgage by the debtor in fee, cannot recover against the mortgagee in possession.—Doe Richardson *vs.* Dickson. Hil. 2 Will. IV.

Landlord. — Where A. defended, as landlord in ejectment, against a purchaser at sheriff's sale of an expired Crown

lease, sold as belonging to B. by assignment: Held, that after proof of an exemplification of the lease, the judgment, *fieri facias*, and sheriff's deed, a notice to produce the original lease and assignment, without specifying particulars, or shewing them ever to have been in A.'s possession, was sufficient to let in secondary evidence of the assignment to B., and that as A. shewed no title, nor that he had ever been in possession, the same presumptions should be made in favor of the purchaser, as if he had been left to contend with the debtor himself.—Doe Maguire *vs.* Dennis. Trinity, 2 & 2 Will. IV.

Several Tenants.—Several tenants, who occupy separate apartments in a house, may be sued jointly in ejectment.—Doe Bell *vs.* Roe. Hil. 3 Will. IV.

New Trial. — Where the plaintiff in ejectment was non-suited, no one appearing at the trial to confess lease, entry and ouster, the Court on an affidavit of merits, and that the defendant's title deeds had been sent by post to Counsel to make a defence, but had arrived too late, set aside the judgment and writ of possession, and granted a new trial on payment of costs.—Doe Clark et al. *vs.* McQueen. Hil. 3 Will. IV.

Evidence.—The admissions of a real person being the plaintiff in ejectment, cannot be given in evidence against the lessor, especially if he be an infant.—Nicholson dem Spafford *vs.* Roe. Hil. 3 Will. IV.

Evidence of Pedigree.—In ejectment by a son and heir at law, evidence of the marriage of his parents, and of his identity, should be given, to prove pedigree.—Doe Humberstone *vs.* Thomas. Hil. 3 Will. IV.

Sheriff's Deed.—In ejectment by a purchaser of lands sold under an execution, the sheriff's deed is *prima facie* evidence that the writ was delivered to the sheriff and the lands seized and sold under it, and the plaintiff may recover an undivided moiety, where his declaration is for the whole premises.- Doe Spafford *vs.* Brown et al. Easter, 3 Will. IV.

Release.—A trustee, lessor in ejectment, cannot release the action.—Doe Boyer *vs.* Claus. Easter, 2 Will. IV.

Defence.—The defendant in ejectment may shew several matters against the plaintiff's right to recover, as that the title was in a third person, and failing in that, that from his position with respect to the lessor, he was entitled to a notice to quit, or a demand of possession.—Doe McDonell, et al. *vs.* McDougall. Trinity, 3 & 4 Will. IV.

Consent Rule.—Where a specific lot was mentioned in the declaration, and the defendant having entered into the consent rule generally, the plaintiff treated it as a nullity, and signed judgment against the casual ejector, the Court set aside the judgment for irregularity, and held that an affidavit on which the defendant moved, entitled as if the consent rule were in force, was correct.— Doe Thompson *vs.* Putnam. et al. Michs. 4 Will. IV.

Entry.—If, at the death of the tenant at will, his heir enter, such entry is tortious; and if the heir die, and his heir enter, the original owner, or his heir, will be put to a right; but the possession of a mother will not be considered tortious as against the heir being her own child, but shall rather be treated as the possession of a guardian.—Doe March *vs.* Empey. Easter, 4 Will. IV.

Landlord.—A debtor in possession of lands which have been sold for his debt at a sheriff's sale, is quasi tenant at will to the purchaser, and cannot dispute his title; and a third person defending as landlord, but shewing no privity between the debtor and himself, nor any connection with the debtor's title, stands in the same relation to the purchaser, as the debtor himself.—Doe Armour *vs.* McEwen. Easter, 4 Will. IV.

Entry.—When the Statute of Limitations once begins, it continues to run, notwithstanding any subsequent disability, and where a stranger is in possession of land, an heir at law who has never entered, cannot convey a title, so as to enable his vendee to recover in ejectment.—Doe Dixon *vs.* Grant et al. Easter, 4 Will. IV.

Mortgage. — Where, in ejectment by a

mortgagee, the tenant claimed possession under a lease from the mortgagor, and refused to attorn to the mortgagee, (who demanded possession,) and shewed no lease nor any certain holding: Held, that he was not entitled to notice to quit.—Doe Samson *vs.* Parker. Hil. 5 Will. IV.

Demand of Possession.—Where the defendant, who went into possession under the lessor of the plaintiff, afterwards refused to acknowledge his right: Held, that he was entitled to neither a notice to quit, nor a demand of possession.—Doe Bouter *vs.* Fraser, et. al Hil. 5 Will. IV.

Demand of Possession—Where the lessor of the plaintiff having been seized in fee of the land in question, conveyed it in fee to the defendant, and took back a lease for life at a nominal rent, and the defendant went into possession, and so continued for several years, with the lessor's knowledge, but without his express consent. Held that he could not be treated as a trespasser, and ejected without a demand of possession. — Doe Mann *vs.* Keith. Hil. 5 Will. IV.

New Trial.—Where evidence was given to shew that a deed was procured by fraud, and the Jury negatived the fraud, but there seemed great doubt as to the correctness of their finding, a new trial was granted on payment of costs.—Doe Melvin *vs.* Gilchrist. Trinity, 5 & 6 Will. IV.

Service of Declaration. — A declaration in ejectment cannot be served by the lessor of the plaintiff. — Doe Armstrong *vs.* Roe. Trinity, 5 & 6 Will. IV.

Fraudulent Conveyance. — Where A. being seised in fee of lands, sold a portion of it to B. but gave him no deed, and B. went into possession, and A. afterwards sold all the land to C. directing that a deed should be made to B. of his portion, when he paid for it in full, and C. sold all to D. except B.'s portion, which D. subsequently bought at Sheriff's sale, where it was sold for B.'s debt, and C. then made a deed of B.'s portion to a stranger for a nominal consideration. Held that such deed was fraudulent as well against D. as against creditors. — Doe Wilcox *vs.* Thorne. Hil. 6 Will. IV.

Lease. — Where notice to produce a Crown lease under which the lessor claimed had been given, and the lease was not produced, but an exemplification of it was put in, and the defendant gave parol testimony that the lease had been assigned to a third party, who had given a mortgage of it to the lessor, which had been paid at the day, and the Jury found for the defendant. Held that the evidence that the lessor had parted with his interest, was sufficient to support the verdict. — Doe Crawford *vs.* Cobbledick. Michs. 6 Will. IV.

Mortgage.—A judgment and execution in ejectment on a mortgage will be set aside in favor of an innocent purchaser without notice, so as to enable him to redeem on payment of costs.—Doe Milburn *vs.* Sibbald. Michs. 6 Will. IV.

Non-suit.—A non-suit for not confessing lease, entry and ouster, and judgment and execution thereon were set aside on payment of costs, on affidavits shewing that a common consent rule had been inadvertently entered into by the defendant, when the circumstances of the case required a special one, and the defendant could not have made his defence on the consent rule filed. — Doe Lasher *vs.* Edgar. Michs. 6 Will. IV.

New Trial. — A new trial on the grounds of the discovery of new evidence, was refused, the affidavits not being sufficiently explicit, and the Court stating that the defendant could bring an action to recover back possession, if his evidence could establish his title.—Doe Brown *vs.* Fraser. Hil. 6 Will. IV.

Vacant Possession.—In ejectment on a vacant possession, after the usual rule had been obtained by the plaintiff, the Court set aside the proceedings on affidavits stating that there was a house on the premises, with several articles of furniture in it, and that the tenant lived near, on condition that the applicant who claimed the title as landlord, should appear and defend.—Popplewell dem. Capreol *vs.* Abbott. Hil. 6 Will. IV.

Fraud.—Where A. having only a bond for a deed, and not having paid all the purchase money, made a conveyance in fee to B. and died, and B. went into possession of the land, and continued in possession for several years, when A.'s administrator obtained a conveyance in fee to himself, from the person who had given A. the bond. Held that the administrator by making use of the deed was guilty of a fraud, and that his title under it could not prevail against B. — Doe Dobie *vs.* Vanderlip. Easter, 6 Will. IV.

Service of Declaration.—Service of a declaration in ejectment is not sufficient, on a person living in the tenant's house, without shewing that it came to the tenant's knowledge.—Doe Smith *vs.* Roe. Trinity, 6 & 7 Will. IV.

Tenants in Common.—A joint demise by tenants in common in a declaration in ejectment cannot be supported. — Doe McNab et al. *vs.* Seiker. Michs. 7 Will.

Demand of Possession.—No demand of possession is necessary before an ejectment brought by an heir, where a party having a bond for a deed from the ancestor, enters into possession, and afterwards assigns his interest and possession to the defendant.—Doe Lemoine *vs.* Vancott. Hil. 7 Will. IV.

Service of Declaration. — Service of a declaration in ejectment on any person but the tenant or his wife is insufficient, unless it can be shewn that the declaration came to the tenant's knowledge before the first day of term.—Doe Gray *vs.* Roe. Hil. 7 Will. IV.

Service of Declaration. — The usual rule for judgment against the casual ejector was granted on an affidavit stating that the deponent, who served the declaration, read part of the notice to the tenant, and explained the meaning of it, and that the tenant seemed to understand it. — Doe McFarlane *vs.* Roe. Hil. 7 Will. IV.

Demand of Possession. — A person holding land under a licence of occupation from the Crown, is entitled to a demand of possession before ejectment brought by a grantee of the Crown in fee. —Doe Creen *vs.* Friesman. Trinity, 1 & 2 Vic.

Casual Ejector. — Where the rule for judgment against the casual ejector, was moved in the second term after service of the declaration, a rule nisi, returnable eight days after service of the rule on the tenant, was granted for the tenant to appear, or otherwise judgment. — Goodtitle dem. Garten *vs.* Roe. Michs. 1 Vic.— Doe Bond *vs.* Roe. Hil. 1 Vic.

Service of Declaration. — Where the affidavit of service of the declaration, stated a service on the tenant in possession of part of the premises, a rule for judgment against the casual ejector, was granted as to such part. — Doe Davidson *vs.* Roe. Michs. 1 Vic.

Staying Proceedings.—Where the lessor of the plaintiff had been attached, and was on the limits for non-payment of the costs of a former ejectment brought by him for the same premises, a rule to stay proceedings in the second action, until the costs of the former one were paid, was refused. — Doe Stewart *vs.* Roe. Michs. 1 Vic.

Mortgage.—A mortgagee will not be admitted to defend as landlord, unless he can shew that the tenant is his mortgagor, or holds under his mortgagor.—Doe Malloch *vs.* Roe. Michs. 1 Vic.

Consent Rule.—Where the lessor of the plaintiff and the tenant, each claimed the land in dispute as part of a different lot, the Court refused to allow the tenant to enter into the consent rule without confessing possession, but directed him to defend, setting out the premises in the consent rule according to his description, and stating them to be the same premises which were claimed by the plaintiff in his declaration.—Doe Ross *vs.* Roe. Michs. 1 Vic.

Estoppel.—A defendant in ejectment cannot set up a title by estoppel in a stranger, unless he claims under him.—Doe Connor *vs.* Collyer. Michs. 2 Vic.

Several Demises.—Where there are several demises laid in the declaration, the rule for judgment against the casual ejector should be entitled, "Doe on the seve-

ral demises of, &c.," and not "Doe on the demise of, &c." But it is not necessary to mention all the demises: it is sufficient to state, "on the several demises of A., B., and others."—Doe McDonald, et al. *vs.* Roe. Hil. 2 Vic. Doe Street, et al. *vs.* Roy. Michs. 2 Vic.

Tenants in Common.—There cannot be a joint demise by tenants in common in ejectment, and mortgagees are not trustees under 4 Will. IV. ch. 1, sec. 48, so as to take jointly, where the deed is silent as to the tenancy created.—Doe Shuter, et al. *vs.* Carter. Hil. 2 Vic.

Service of Declaration.—Service of the declaration in ejectment on a person who is stated in the affidavit to have admitted himself to be tenant in possession, is not sufficient: he must be sworn to be tenant in possession.—Doe Dunn *vs.* Roe. Easter, 2 Vic.

Demand of Possession.—A demand of possession made by a person, who afterwards assigned his interest to the lessor of the plaintiff, cannot be made available by the lessor, so as to make the tenant's holding tortious as to him.—Doe Creen *vs.* Friesman. Easter, 2 Vic.

Expiration of Title.—A lessor, who had the title to the premises at the time of action brought, but not at the time of trial, is entitled to damages, although he cannot recover his term.—Doe Meyers *vs.* Blakier. Easter, 2 Vic.

Service of Declaration.—An affidavit of the service of a declaration in ejectment, on a person who represented herself to be the wife of the tenant, is insufficient, unless it states the deponent's belief that she is so.—Doe Sanderson *vs.* Roe. Trinity, 2 & 3 Vic.

Service of Declaration.—An affidavit of the service of a declaration in ejectment, cannot be sworn before the Attorney in the cause.—Doe Walker *vs.* Roe, Trinity, 2 & 3 Vic.

ELEGIT.

A judgment is not a lien upon lands for the purpose of an elegit, so as to avoid the effect of a writ of *fieri facias* against lands, issued on another judgment subsequently entered, but placed in the sheriff's hands prior to the elegit; and quære can an elegit be regularly issued in this Province? —Doe Henderson *vs.* Busteed. Easter, 2 Will. IV.

EQUITY OF REDEMPTION.

An equity of redemption in a term of years, cannot be sold on execution.—Doe Webster *vs.* Fitzgerald. Easter, 2 Vic.

ESCAPE.

See also SHERIFF.

Where a sheriff refuses to produce a prisoner in his custody, twenty-four hours after notice, it is an escape. And where, in debt for an escape on a capias ad satisfaciendum, the sheriff pleaded, that he gave the prisoner the benefit of the limits, and that he never left them, &c., and the plaintiff replied that he did leave them: Held, that the plaintiff shewed an escape under this issue, by proving that after the prisoner was admitted to the limits, she was remanded back to custody, that the order remanding her was delivered to the sheriff, and that he received due notice to produce her body, but failed in doing so.—Wragg *vs.* Jarvis, Mich. 6 Will. IV.

In a declaration for an escape on a writ issued from a District Court, the making and filing of an affidavit of debt must be alleged.—Wragg *vs.* Jarvis, & Munson *vs.* Hamilton. Easter, 6 Will. IV.

In debt for an escape, the sheriff cannot plead satisfaction previous to the issuing of the writ, from which the escape was made, in bar of the action.—Munson *vs.* Hamilton. Easter, 6 Will. IV.

On the death of a Sheriff, his deputy is charged with the execution of his office, until a new Sheriff is appointed, and he must assign over by indenture as well the debtors on the limits, as those in custody, and the new Sheriff is not liable for the escape of a debtor, on the limits at the time of his appointment, without such assignment.—McPherson et al. *vs.* Hamilton. Easter, 7 Will. IV.

An action for an escape on mesne process will not lie, where a valid bail bond has been taken, and an action for an escape should be brought against the Sheriff and not against the bailiff, who arrested, unless the bailiff has been guilty of a rescue.—Wilson *vs.* M'Cullagh. Michs. 2 Vic.

A Sheriff is not liable for an escape, where his bailiff arrests a debtor when he has no warrant against him, although he has the writ in his possession, nor is the Sheriff liable on a count for not arresting under such circumstances, and where the Sheriff has once attempted to make an arrest, and has failed, he is not bound to make another attempt, unless he has express notice where the debtor is.—Rigney *vs.* Ruttan. Hil. 2 Vic.—Falconridge *vs.* Hamilton. Easter, 2 Vic.

A Sheriff may bring an action against bail to the limits, for the escape of the debtor, before he has been sued or paid the money, for which the debtor was in execution.—Ruttan *vs.* Wilson, et al. Michs. 3 Vic.

Where a Sheriff arrested a debtor under mesne process, issued from a District Court in trespass, and afterwards suffered him to escape. Held that he was not liable therefor, the writ being void.—Smith *vs.* Jarvis. Hil. 3 Vic.

In an action for an escape on final process, a plea of the insufficiency of the gaol is bad.—Rowan *vs.* McDonell. Hil. 3 Vic.

ESTOPPEL.

Quære whether the verdict of a Jury under the 50th Geo. 3 ch. 1 upon the same matter directly in question, operates as an estoppel against all future similar applications.—Rex *vs.* Justices of Home District. Trinity 11 Geo. IV.

Where the nominee of the Crown, before any grant was made to him, conveyed in fee to A., covenanting that he was seised in fee, and after the grant came out, conveyed in fee to B. Held that the first conveyance operated by estoppel against the Grantee of the Crown, and B. his privy in estate, and that A. was entitled to recover in ejectment.—Doe Henessy *vs.* Myers. Easter, 2 Will. IV.

Where A. and his wife, having no legal interest in the lands in question, conveyed to B. in fee, covenanting that they were seised in fee, and had good title &c., but the wife did not execute the deed, and afterwards a grant from the Crown issued to A. of the same land, and he then conveyed to C. in fee. Held that C. was not estopped as a privy in estate, by the prior conveyance to B., the covenants executed by A. alone not being sufficient.—Doe Tiffany *vs.* McEwen. Michs. 1 Vic.

A deed conveying all the grantor's interest in land, in which he had no interest at the time, but in which he subsequently obtained an interest, will not operate by estoppel.—Doe Peters *vs* Outwater. Michs. 2 Vic.

A defendant in ejectment cannot set up a title by estoppel in a stranger, unless he claims under him.—Doe Connor *vs.* Collyer. Michs. 2 Vic.

A deed of bargain and sale, with covenants for title and quiet enjoyment, &c., and executed by the bargainor only at a time, when he had no interest in the premises, does not estop a third party, to whom he has conveyed, after obtaining such estate.—Doe Bell *vs.* Vroman. Easter, 2 Vic.

EVIDENCE.

See also WITNESS.

Mitigation of Damages—Mesne Profits.—In trespass for mesne profits, the defendant may give in evidence in mitigation of damages, the value of buildings erected on the premises by him.—Lindsay *vs.* Macfarlane. Michs. 10 Geo. IV.

Particulars.—Under a bill of particulars of work and labor, the plaintiff may give in evidence the acknowledgment of a specific balance.—Drummond *vs.* Bradley. Michs. 1 Will. IV.

Money had and Received—Sheriff.—In an action against a Sheriff, for the overplus of money levied against the plaintiff, under an execution, a demand of the money before action brought, must be proved. Ruggles *vs.* Beikie. Michs. 1 Will. IV.

Executor and Administrator.—Where the plaintiffs declared as executors, laying promises to the testator in his life time, promises to the plaintiffs as Executors after his death, and an account stated with the plaintiffs as Executors, and proved an acknowledgment to the plaintiffs of the debt, the Court held, that it was not necessary to produce the probate of the will, to prove their representative character.—Dickson et al. *vs.* Markle. Hil. 1 Will. IV.

Alien.—On a traverse of office, the issue was whether Lane, an alien, was seized in fee on the 1st July, 1813, of the lands in question. The traverser proved a prima facie title, and a possession was then proved in the alien about twenty years before the trial; no conveyance however was produced, but a memorial of a mortgage for years from the alien to the original grantee of the Crown, under whose heir the traverser claimed, was proved.—Held not to be conclusive evidence of a seisin in fee by the alien, and the Judge at Nisi Prius, having left it to the jury under the evidence, to find whether the original grantee had conveyed to the alien in fee, which they negatived. The Court refused a new trial.—Rex *vs.* Theale. Hil. 1 Will. IV,

Customs—Information.—Where to an information for the condemnation of goods as illegally imported, the defendant pleaded, that they were not imported modo et forma, and at the trial offered to prove, under this plea, that the goods had been landed through stress of weather, which he was not allowed to do, and the Jury found a verdict against him, the Court, considering that the evidence was admissible, granted a new trial.—The Attorney General *vs.* Spafford. Hil. 1 Will. IV.

Secondary Evidence.—The recognition of the existence of a bond, in a letter from the defendant to the plaintiff, with proof, that a document, purporting to be a copy or draft of such an instrument, was shewn by the defendant with the title deeds of an estate, to which it related, affords sufficient evidence to go to a Jury in proof of such bond, after notice to produce, and a failure by the defendant to produce any bond, copy or draft.—Rochleau *vs.* Bidwell. Easter, 1 Will. IV.

Record.—Every roll and record filed and docketted in the proper office, will be presumed correct, until the contrary be shewn, although it may appear that the entries were not examined with the original papers, by the officer, at the time of filing and docketting.—Prentice *vs.* Hamilton. Easter, 1 Will. IV.

Privileged Communication.—A charge of stealing office monies, made by a clerk in a public office to the head of the department, against another Clerk, was held not to be a privileged communication, in the absence of any proof of the loss of such monies, or of the grounds of the accusation, although the principal, to whom the accusation was made, stated that he believed that the defendant imagined the charge to be true.—Prentice *vs.* Hamilton. Easter, 1 Will. IV.

Attorney.—In an action against an Attorney, for money had and received for a client, he cannot go into evidence, to shew that the judgment, on which he received the money, was obtained by his client by fraud.—Williams *vs.* King. Easter, 1 Will. IV.

Covenant for Title.—In covenant for title, the breaches assigned were, want of seisin in fee, and an eviction by a stranger, stated in the declaration to be entitled, to which the defendant pleaded a seisin in fee in himself. Held that on the plaintiff proving an eviction by the stranger, without shewing his title, it was incumbent on the defendant to give evidence of a seisin in himself.—Vary *vs.* Muirhead. Easter, 1 Will. IV.

Malicious Prosecution.—In case for a malicious prosecution, the declaration stated the trial before the Hon. Levius P. Sherwood and A. McDonell, assigned by his Majesty's letters patent, to them and others named therein directed, and the record in evidence, was of a trial before the Hon. Levius P. Sherwood and others, his fellow Justices, assigned by letters patent directed to him and others, or any two of them, of whom he was to be one. Held no variance.—Prentice *vs.* Hamilton. Trinity, 1 and 2 Will. IV.

Trespass—General Issue.—In trespass for driving against and killing the plaintiff's horse, the defendant cannot give in evidence under the general issue, that it was an accident, and arose from the plaintiff's own negligence. The defence should be specially pleaded.—McDonald *vs.* Monk. Hil. 3 Will IV.

Secondary Evidence.—In assumpsit for not delivering goods, after the plaintiffs had proved a verbal agreement, the delivery of part of the goods, and also an un-

dertaking by the defendant, that he would not exercise a certain trade, within a fixed distance of the plaintiffs, the defendant gave in evidence a copy of the affidavit of debt made in the cause, and of an agreement in writing incorporated therein, sworn to by one of the plaintiffs, and then called upon the plaintiffs to produce the original agreement, not having served any notice to produce, and the copy of the agreement in the affidavit of debt, not stating any thing about that part of the undertaking proved by the plaintiff, concerning the exercise of the defendant's trade. Held that no notice to produce was necessary, the plaintiffs having shewn themselves in possession of the agreement, by their affidavit of debt, and that as the writing was the best evidence, it should have been produced, and that that part of the evidence concerning the exercise of the defendant's trade, not being contained in it, should have been rejected.—Gilbert et al. *vs.* Sleeper. Easter, 3 Will. IV.

Affidavit.—To prove that a party made an affidavit, which has been filed, a sworn copy of the affidavit coming from the hands of the proper officer, and shewn to have been used in the cause is sufficient.—Spafford *vs.* Buchanan. Hil. IV Will. IV. FitzGerald *vs.* Webster. Michs. 3 Vic.

Secondary evidence.—Where in ejectment, notice to produce a Crown lease, under which the lessor of the plaintiff claimed, had been given, and the lease was not produced, but an exemplification of it was put in, and the defendant gave parol testimony that the lease had been assigned to a third party, who had given a mortgage on it to the lessor, which had been paid at the day, and the jury found for the defendant. Held that the evidence that the lessor had parted with his interest, was sufficient to support the verdict.—Doe Crawford *vs.* Cobbledike. Michs. 6 Will. IV.

Averment.—Where in a declaration in an action against an Insurance Company, it was averred that certain affidavits necessary according to the terms of the policy, were made by A. and B. Held that such averment was material, and proof of affidavits made by other persons, insufficient. —Alderman *vs.* West of Scotland Insurance Company. Hil. 6 Will. IV.

Written Agreement. — Where there was a written agreement, fixing the price of certain work. Held that in action for compensation for such work, the agreement must be produced. — Wallace *vs.* Masson. Easter, 6 Will. IV.

Trespass—Sheriff.—In trespass against a Sheriff for seizing property in execution, it is not sufficient to call the bailiff, who made the seizure; his warrant must be produced, or its non-production accounted for.—Lewis *vs.* Jarvis. Easter, 6 Will. IV.

Affidavits under 5 Geo. II.—The statute 5 Geo. II. ch. 7 sec. 1, respecting affidavits made in England to prove debts sued for here, is still in force, and quære whether such an affidavit, made before a suit was commenced here, should be entitled, or whether it can be used at the trial, and where one party to a suit issues a commission to examine witnesses, the other party has a right to call for and make use of it at the trial, and semble, that an order for its publication may be obtained before trial.—Gordon *vs.* Fuller. Trinity, 6 & 7 Will. IV.

Commission. — The signature and seal of the Chief Magistrate of a town in a foreign country, to an affidavit proving the due execution of a commission to examine witnesses, issued from this Court, are to be considered genuine without further proof.—Doe Lemoine *vs.* Raymond. Michs. 7 Will. IV.

Exhibits. — Sworn copies of exhibits filed in the Crown Office, cannot be received in evidence; the originals should be produced. — Nelson et al. *vs.* McDonell. Hil. 7 Will. IV.

Slander.—In case for slander, words stated in the declaration, as if narrated by the defendant in the third person, are not supported by proof of words spoken by him, in the first person.—Phillips *vs.* Odell. Hil. 7 Will. IV.

Credits.—A plaintiff is not bound by credits, given by him in account, on the mere statement of the defendant, but may

reject such credits, unless the defendant can shew that they ought to be allowed. —Gordon *vs.* Fuller. Trinity, 1 & 2 Vic.

Privileged Communication.—A communication, made to an Attorney in his professional character, is privileged, although no suit concerning the subject matter, is pending at the time, nor any contemplated. —Battersby *vs.* Haycock. Easter, 2 Vic.

Admission.—An admission by a debtor on the limits, that he has left the limits, is not admissible to charge his sureties.—Freeland *vs.* Jones. Michs. 3 Vic.

EXECUTION.

See also—Capias ad Satisfaciendum—Fieri Facias.

An execution against the goods or lands of the defendant, tested after his death, is void.—McCarthy *vs.* Low. Hil. 2 Will. IV.

It is irregular to issue a Fieri Facias against lands, until after the return of the execution against goods, but as it is only an irregularity, a purchaser at sheriff's sale under the writ against lands, cannot be affected by it. —Doe Spafford *vs.* Brown.—Easter, 3 Will. IV.

The Court will not order that execution shall issue on a judgment, for the benefit of a third party, a stranger to that judgment. — Gamble et al. *vs.* Bussell. Michs. 7 Will. IV.

The Court will not restrain a plaintiff, from levying the whole of his debt or damages, on one of several defendants.—Zavitz *vs.* Hoover et al. Michs. 2 Vic.

An equity of redemption in a term of years, cannot be sold under an execution against goods.—Doe Webster *vs.* Fitz. Gerald. Easter, 2 Vic.

When an execution has been issued, but not returned and filed within a year after judgment, the judgment must be revived by scire facias.—Sewell *vs.* Thompson. Easter, 2 Vic.

EXECUTOR AND ADMINISTRATOR.

Devastavit.—On a return of a devastavit, a writ of capias ad satisfaciendum does not issue as a matter of course, without inquiry. — Willard *vs.* Woolcott. Trinity, 11 Geo. IV.

Probate.—Where the Plaintiffs declared as executors, laying promises to the testator in his life time, promises to the plaintiffs as executors after his death, and an account stated with the plaintiffs, as executors, the Court held that it was not necessary to produce the probate to prove their representative character.—Dickson et al. *vs.* Markle. Hil. 1 Will. IV.

Plene Administravit.—An executor cannot plead plene administravit to a scire facias to revive a judgment against himself as executor, as that plea might have been pleaded in the original action, and if the nature of the judgment appear in the declaration, such plea will be bad on demurrer.—Wood *vs.* Leeming et al. Easter, 2 Will. IV.

Assets.—Lands are assets for the satisfaction of debts, in the hands of an executor under 5 Geo. II. ch. 7, and to a plea of plene administravit, the plaintiff may reply lands. — Gardiner *vs.* Gardiner. Trinity, 2 and 3 Will. IV.

Disclaimer.—A disclaimer by an executor who is also a trustee under the Will, will not divest him of his estate as trustee.—Doe Boyer et al. *vs.* Claus. Easter, 2 Will. IV.—Doe Berringer *vs.* Hiscott. Michs. 3 Vic.

Lands.—A judgment against an executor to recover de bonis testatoris, will warrant an execution against lands, on a return of nulla bona to the writ against goods.—Doe Jessup *vs.* Bartlett. Trinity, 3 and 4 Will. IV.

Lands.—Where lands have been sold in the hands of an executor, on an execution for the debt of the testator, the heir at law is entitled to the surplus monies arising from the sale.—Ruggles *vs.* Beikie. Hil. 4 Will. IV.

Probate.—An executor suing for a cause of action arising after the death of his testator, must, under the general issue, produce the probate of the Will, but where on the general issue pleaded to a declaration containing counts, for a cause of action, in the time of the testator, as well as since his death, both causes of action were proved, but no probate was produced, it was held that the production

was unnecessary, as it appeared on the record, from a verdict being found for a cause of action in the time of the testator, that the plaintiffs were executors.—McGill et al. *vs.* Bell. Michs. 5 Will. IV.

Assumpsit.—Where a father, intending in the distribution of his property, to give his son a hundred acres of land, was induced by the son to exchange that land for the property of a stranger, the father paying £125 for such exchange, and the son promising to repay it, so that it might go in the distribution to the rest of the family, and the father, then, for a nominal consideration, conveyed to the son the land received in exchange. Held, that the executors of the father might maintain an action against the son for the £125, as money paid to his use, that they were not estopped by the consideration stated in the Deed, and that it was not for an interest in lands within the statute of frauds.—McBride et al. *vs.* Parnell. Easter, 5 Will. IV.

Declaration.—Where a plaintiff, in his declaration, styled himself administrator of A. B., and laid promises to himself administrator as aforesaid, but did not aver any debt or promise to himself *as* administrator, nor make any profert of letters of administration, a plea of ne unques administrator was held bad on general demurrer.—Walker *vs.* Court. Hil. 6 Will. IV.

Plene Administravit.—In a very hard case a new trial was granted, to enable an executor to plead plene administravit.—McMartin *vs.* Traveller. Easter, 6 Will. IV.

Bond.—On a Bond given to executors, they may sue either as executors or in their own right.—Exors. of Davis *vs.* Davis. Trinity, 1 and 2 Vic.

Lands.—The lands of a testator may be sold on a judgment against one of several executors, in the same manner as if the judgment had been against all.—Doe Smith *vs.* Shuter et al. Trinity, 1 and 2 Vic.

Lands.—A purchaser at sheriff's sale of lands, sold on an execution against a devisee, takes in preference to a purchaser on a subsequent execution, though prior judgment, against the executors of the testator.—Doe Auldjo *vs.* Hollister. Easter, 2 Vic.

Money had and received.—Where money has been paid by a testator on an agreement for the purchase of lands, which the vendor has failed to complete, it may be recovered back by the executors. Smart et al. *vs.* Brown, Easter, 2 Vic.

Debtor.—Executor.—A testator, who was indebted to the defendant, appointed him his executor, and he, being desirous of securing his own debt, made an arrangement with the plaintiff, to whom the testator had owed nothing, to confess a judgment to him, that an execution might issue against the lands of the testator in the defendant's hands as executor, and that the plaintiff should pay the proceeds arising from the sale to the defendant for his debt, and a confession having been given and execution issued in pursuance of this arrangement, the Court, on the application of the tenant of the land, set aside all the proceedings, with costs.—Bonnistiel *vs.* McMasters. Michs. 3 Vic.

EXHIBITS.

Sworn copies of exhibits, filed in the Crown Office, cannot be received in evidence, the originals should be produced. Neilson et al. *vs.* McDonell. Hil. 7 IV.

FALSE IMPRISONMENT.

Where a debtor on the limits, on a writ of capias ad satisfaciendum, issued out of a district court, was brought by his bail for surrender to the sheriff, who refused to receive him except at the gaol, but gave a certificate, which was taken away by the bail, that the gaoler might receive him, and the bail did not then surrender him, but some time after, (the debtor, in the meantime, having gone off the limits,) gave him up to the sheriff, who kept him in close custody, until he was discharged by an order of the judge of the district court. Held, that an action for false imprisonment would not lie against the sheriff, for taking the debtor on the second surrender, the first having been conditional, and the condition not complied with, and the escape having been negligent, and not voluntary.—Thomson *vs.* Leonard. Easter, 3 Will. IV.

In trespass for false imprisonment, a plea justifying under process of a district court, which had been set aside for irregularity on the terms of no action being brought, cannot be sustained. The defendant should have applied to have stayed the proceedings.—Ferris *vs.* Dyer et al. Easter, 5 Will. IV.

In trespass for false imprisonment, a plea justifying under process of a district court, must state that an affidavit for a sum certain was filed, to warrant the issuing of the process.—*Ib.* Hil. 6 Will. IV.

A private individual cannot arrest on suspicion of felony, he must show a felony committed.—Ashley *vs.* Dundas. Easter, 2 Vic.

FALSE RETURN.

See also SHERIFF.

Where a writ of Fieri Facias was placed in a Sheriff's hands against the goods of a defendant, who was in the possession of property in his District at the time, and a levy was made, but the plaintiff afterwards compromised with the defendant, receiving payment of his debt by instalments, but giving no directions to the Sheriff to discharge the defendant's property. Held that on a return of nulla bona by the Sheriff, several months afterwards, when the defendant had absconded without satisfying the balance of the debt, the plaintiff could not sue for a false return, as he was precluded by the arrangement which he had made with the defendant.—Everarghim *vs.* Leonard. Easter, 3 Will. IV.

Where attachments were issued against an absconding debtor, and the last attaching creditor having obtained execution first the Sheriff afterwards returned nulla bona to the execution of the first attaching creditor. Held that he was liable for a false return, the first attaching creditor being entitled to priority.—Gamble et al. *vs.* Jarvis. Trinity, 6 and 7 Will. IV.

FEME COVERTE.

The husband must be a party to any deed, aliening the real estate of his wife under Provincial statutes 43 Geo. 3, ch. 5, and 59 Geo. 3 ch. 3, and it is not sufficient, that he signs and seals the deed, unless he is expressly named as a party in it.—Doe Bradt *vs.* Hodgkins. Michs. 2 Will. IV.

A husband, having given notice to the plaintiff, that he would not be responsible for goods furnished to his wife, who had withdrawn herself from his protection, was held not to be liable for goods furnished to her by the plaintiff, without his knowledge, after she had returned to him again. —Weaver *vs.* Lawrence. Easter, 2 Vic.

FENCES.

The statute 4 Will. IV. ch. 12, for regulating line fences, does not apply to cases where there is an express agreement existing between the parties.—Lane *vs.* Mulholland et al. Easter, 6 Will. IV.

A land owner in this country must fence against cattle.—Spafford *vs.* Hubble. Michs. 2 Vic.

FERRY.

In case for disturbing the plaintiff's ferry, it is not necessary to prove, that the defendant either received or claimed any hire or payment.—Burford *vs.* Oliver. Michs 10 Geo. IV.

FIERI FACIAS.

See also EXECUTION—LANDS.

A writ of Fieri Facias, against the goods or lands of a defendant, tested after his death, is void.—M'Carthy *vs.* Low. Hil. 2 Will. IV.

It is not improper for a Sheriff to return to a writ of fieri facias, that he has made the money, *and paid it over to the Plaintiff's Attorney*, the words in italics being mere surplusage.—Doyle *vs.* Bergin. Trinity 1 and 2 Vic.

An original writ of fieri facias with the Sheriff's return thereon, having been lost, the plaintiff was allowed to issue a duplicate to obtain a return, to warrant an alias. —McEwen *vs.* Stoneburne. Trinity, 7 Will. IV.

A term of years cannot be sold under a writ of fieri facias against lands and tenements.—Doe Court *vs.* Tupper et al. Trinity, 1 and 2 Vic.

An equity of redemption in a term of years cannot be sold under a fieri facias.—Doe Webster *vs.* FitzGerald. Easter, 2 Vic.

FISHERY.

The Crown cannot grant an exclusive right of fishery, in navigable waters in this Province.—Moffat et al. *vs.* Roddy. Michs. 2 Vic.

FORCIBLE ENTRY.

An inquisition for a forcible entry, taken before magistrates, under VIII. Henry, 6 ch. 9, must shew what estate the party expelled had in the premises, and if it do not, the inquisition will be quashed, and the Court will award restitution. The inquisition will also be bad, if it appear to the Court, that the defendant had no notice, or that any of the Jury had not lands or tenements of the value of forty shillings, or that the party complaining was sworn as a witness.—Rex *vs.* McHeavrey et al. and Mitchell *vs.* Thompson. Michs. 1 Vic.

FOREIGN JUDGMENT.

A plea of a foreign judgment, pleaded puis darrein continuance, must show that the cause arose since the last continuance, and that the judgment was on the merits, and conclusive between the parties in the court or country, where it was given, or the plea will be bad, and semble, such a judgment properly pleaded would be a bar.—McPhedran *vs.* Lusher. Trinity, 4 and 5 Will. IV.

In an action upon a foreign judgment, the seal of the Foreign Court is sufficiently proved, by a person, who examined the seal on the judgment, with the original seal in the proper office of the foreign Court, and costs are recoverable on a foreign judgment, which awards costs, although not actually taxed, until long after the time when the judgment was entered. —Hall *vs.* Armour. Hil. 6 Will. IV.

A foreign judgment cannot be proved, by a certificate from the Clerk of the foreign court, that judgment has been entered for a certain sum in favor of the plaintiff. — Norton *vs.* Post. Easter, 6 Will. IV.

FOREIGN LAW.

Where the law of a foreign country, as to the presentment for payment of a bill of exchange, payable at a particular place there, is not shewn, the necessity for such presentment, must be determined by the law as it exists here.—Buffalo Bank *vs.* Truscott et al. Michs. 2 Vic.

FRAUDS, STATUTE OF.

A. agreed to pay B. for a lot of land upon receiving a deed, B. offered the deed, when A. declared his inability to pay, and proposed new terms, which were accepted. Held that B. was thereby relieved from the necessity of tendering a deed to entitle him to sue A. or to rescind the contract, and that an agreement in writing within the Statute of Frauds, might be waived, discharged and determined by a subsequent verbal agreement. Quære, whether before or after breach?—Mulgrave *vs.* Pringle. Hil. 1 Will. IV.

Several documents may be construed together, as evidence of an agreement or note in writing under the Statute of Frauds, and a conveyance in fee from the plaintiff to the defendant, with covenants for title, but not for further assurance, a bond to the defendant for further assurance at a fixed period, on receiving an additional sum of money with interest, together with a subsequent written offer from the defendant to the plaintiff, to purchase another property, by paying part of the purchase money at once, and the residue at a future day, on receiving a bond from the plaintiff like the former bond, for a deed of confirmation in the same manner as in that bond. Held sufficient to constitute an agreement, or note or memorandum thereof, of the second purchase, within the Statute, and to enable the plaintiff to recover from the defendant, the sum specified in the bond and interest thereon, on his tendering a confirmation, and making a demand of the money.—Rochleau *vs.* Bidwell. Easter, 1 Will. IV.

Where A. purchased plate of B. of the value of £70, and directed him to have his crest engraved on it, and afterwards to forward it to his place of residence, but paid no part of the purchase money, nor any earnest, and B. having obeyed his orders, brought an action against him for the price, A. having refused to receive the plate, saying that it was not the same as he had purchased. Held that A.'s direc.

tions for the engraving of the crest, and the forwarding to his place of residence, constituted a sufficient acceptance and delivery, to take the case out of the seventeenth section of the Statute of Frauds.—Walker *vs.* Boulton. Trinity, 3 & 4 Will. IV.

Where a father, intending in the distribution of his property, to give a son a hundred acres of land, was induced by the son, to exchange that land for the property of a stranger, the father paying £125 for such exchange, and the son promising to re-pay it, so that it might go in the distribution to the rest of the family, and the father then for a nominal consideration, conveyed to the son, the land received in exchange. Held on an action being brought, by the Executors of the father against the son, for the money, that it was not a contract for an interest in lands with the Statute of Frauds.—McBride et al. *vs.* Parnell. Easter, 5 Will. IV.

An agreement to enter upon and clear land, and take the wood after it is cut down in payment of the labor, is not for an interest in lands within the Statute of Frauds, and the person clearing the land, may maintain trespass against the owner of the land, for taking away the wood after it is cut down, although he has no possession in the land, to enable him to maintain trespass quare clausum fregit.—Hamilton *vs.* McDonell. Easter, 2 Vic.

FRAUDULENT ASSIGNMENT.

A deed fradulent as to creditors, cannot be impeached by the heir of the party who committed the fraud, nor by a stranger acting nominally for himself, but really for the heir.—Doe Danby *vs.* VanKoughnet. Trinity, 6 and 7 Will. IV.

GAOL.

A plea of the insufficiency of his gaol, is no answer to an action against a sheriff for an escape in execution.—Rowan *vs.* McDonell. Hil. 3 Vic.

GAOL LIMITS—See LIMITS.

GOODS SOLD.

Where the defendant in this country, ordered certain articles of clothing to be made and sent to him by the plaintiff from England, and on their arrival here, they were received by the plaintiff's agent, who did not tender them to, nor leave them with the defendant, although he demanded payment for them, which was refused. Held that an action for goods sold and delivered would not lie, but that the plaintiff should have declared specially for the non-acceptance.—Lane *vs.* Melville. Easter, 3 Will. IV.

Where a steamboat was mortgaged, and in the possession of the mortgagees, who navigated her for their own benefit to secure their advances, and she was tortiously taken possession of by the captain, who received the profits arising from her, for his own use. Held that the mortgagor was not liable for goods furnished for the vessel, while she was in the tortious possession of the captain.—Fraser *vs.* Flint. Michs. 5 Will. IV.

An action for goods bargained and sold, cannot be maintained against a person, who has become responsible for the payment of goods delivered to a third party.—McKenzie et al. *vs.* McBean. Easter, 5 Will. IV.

GRANT.

See also CROWN GRANT.

The description in a grant will be taken as correct, unless the contrary be clearly shewn.—Doe Smith *vs.* Myers. Hil. 2 Will. IV.

In actions in which the King is a party, in the construction of grants from the Crown, where there is an ambiguity in respect of the premises, as for instance, what is to be considered the bank of a river, other grants from the Crown are admissible in evidence to assist the Construction, and grants from the Crown either for a valuable consideration, or of especial favor, are to be construed in the same manner, as deeds from subject to subject.—Clarke et al. *vs.* Bonnycastle. Easter, 4 Will. IV.

GUARANTEE.

Declaration in assumpsit on a guarantee to the follo wing effect, "Please credit A. one hundred pounds, and I agree to hold myself responsible for the payment of the same," and an averment that the plaintiff did credit A. Held that the plaintiff must

prove such averment, and that calling a Clerk, who stated that such credit had been given, because he saw it so entered in the plaintiff's books, which were not produced, and which entry had not been made by him, was not sufficient to prove it. Quære, is such an undertaking within the statute of Frauds?—Parker *vs.* Dutcher. Trinity, 1 and 2 Will. IV.

An action for goods bargained and sold, cannot be maintained against a person, who has become responsible for the price of goods furnished to a third party. There must be a special action on the guarantee. —McKenzie et al. *vs.* McBean. Easter, 5 Will. IV.

A past consideration, stated in a written undertaking to be responsible for the debt of another, is not sufficient within the statute of Frauds.—Wilson *vs.* Hill. Easter, 2 Vic.

GUARDIAN.

The possession of a mother will not be considered tortious, as against the heir, being her own child, but will rather be treated as the possession of a guardian.—Doe Moak *vs.* Empey. Easter, 4 Will. IV.

HEIR.

No action lies in this Province against an heir, on the simple contract debt of his ancestor.—Forsyth *vs.* Hall. Hil. 1 Will. IV.

In ejectment by a son and heir, evidence of the marriage of his parents, and of his identity, must be given to prove pedigree. —Doe Humberstone *vs.* Thomas. Hil. 3 Will. IV.

The heir at law is entitled to recover from a Sheriff, the surplus of monies arising from a sale of his ancestor's lands, on a Fieri Facias against those lands, in the hands of his Executor.—Ruggles *vs.* Beikie. Hil. 4 Will. IV.

If on the death of a tenant at will his heir enter, such entry is tortious, and if the heir die, and his heir enter, the original owner or his heir will be put to a right. —Doe Moak *vs.* Empey. Easter 4 Will. IV.

Where there is an adverse possession of land, an heir at law, who has never entered, cannot make a conveyance, so as to enable his vendee to recover in ejectment.—Doe Dixon *vs.* Grant et al. Easter, 4 Will. IV.

No demand of possession is required, before an action of ejectment brought by an heir, where a party having a bond for a deed from the ancestor, entered into possession, and afterwards assigned his interest and possession to the defendant.—Doe Lemoine *vs.* Vancott. Hil. 7 Will. IV.

HIGHWAY.

Where in the original plan of a Township, a piece of ground was laid out as a highway, which was subsequently granted by the Crown in fee to several individuals, and was occupied by them, and others claiming from them, for upwards of thirty years. Held that an indictment for a nuisance, for stopping up that piece of ground, claiming it as a highway, could not be sustained.—Rex *vs.* Allan et al. Trinity, 1 and 2 Will. IV.

Justices in Quarter Sessions cannot refuse to confirm the unopposed report of a surveyor of highways, recommending the alteration or opening of a new road, on the ground that the proposed road has been finally rejected by the verdict of a jury on a former occasion, if, upon inspection, the alteration and line of road rejected by the jury, and the object of the pending proceeding, do not seem identical. —Rex *vs.* Justices of Home District. Trinity, 11 Geo. IV.

An indictment for obstructing a highway, laid out under 50 Geo. III. ch. 1, cannot be supported, when the highway has not been established, in the manner marked out by that statute, as when the report to the magistrates in Quarter Sessions by the surveyor of roads, does not express the exact width of the road, nor the precise line in which it is to run; and semble, in such a case, all the steps necessary to be taken, before a highway can be legally established under that Act, should be proved by the prosecutor to have been taken, before the defendant can be found guilty.—Rex *vs.* Sanderson. Easter, 3 Will. IV.

A piece of land, marked out in the original plan of a township, as an allowance

for road, does not lose that character, because it has never been used as a road for a period of forty years, and a copy of the original plan of the township is admissible in evidence to prove such allowance, although it does not appear by whom, nor from what materials, the plan was compiled.—Badgley *vs.* Bender. Trinity, 3 & 4 Will. IV.

Where, in an original survey, an allowance for road had been made between certain lots, and afterwards, and before 1810, grants were issued from the Crown, making the allowance between other lots: Held, that the grants must be considered most correct, and that the plaintiff, to whom one of the former lots belonged, was entitled to recover for a trespass, committed on that part of his lot, claimed as an allowance for road.—Field *vs.* Kemp. Hil. 4 Will. IV.

Where, in trespass for cutting timber, the question was, in which of two townships, there was an allowance for road, and the grants from the Crown not being very explicit, the plaintiff endeavored to support his construction of the grant by parol evidence, which was rebutted by the defendant, by parol testimony also, and the jury found for the defendant, the Court held such finding right, and that parol evidence was admissible.—Miller *vs.* Palmer. et al. Hil. 4 Will. IV.

HORSE.

It was held, in an action on a promissory note, given by the defendant for a difference in price on an exchange of horses with the plaintiff, that it was no defence, that the horse received from the plaintiff was unsound, the plaintiff having, immediately after the exchange, sold the horse received by him, and the defendant never having offered to return the plaintiff's horse.—Hall *vs.* Coleman. Hil. 2 Will. IV.

Where a horse was stolen from the plaintiff, and bought by the defendant at public auction, but not in market overt, and the plaintiff afterwards seeing the horse, took possession of it, and the defendant immediately retook it: Held, that the plaintiff had a right to retake it, no property having passed to the defendant by the sale; and that, although it was in his possession only for a moment, yet, the property revested in him, and he could maintain trespass against the defendant for the retaking; and that, as the thief was unknown, it was not necessary to shew a prosecution to conviction.—Bowman *vs.* Yielding et. al Michs. 3 Vic.

HUSBAND and WIFE—See BARON and FEME—FEME COVERTE.

ILLEGAL CONTRACT.

Held, that money paid on a promissory note, given for the value of goods, which were to have been smuggled into the Province, could not be recovered back, although the goods had never been delivered.—Anguish *vs.* House. Trinity, 1 and 2 Vic.

IMPRISONMENT—See FALSE IMPRISONMENT.

INDEMNITY ACT.

Proceedings were stayed with double costs, under the Indemnity Act 1 Vic. ch. 12, after judgment by default and assessment of damages.—Hyatt *vs.* Anger. Easter, 2 Vic.

In trespass for seizing fire arms, a justification by the defendant as an alderman of the City of Toronto, and claiming protection under the Indemnity Act 1 Vic. ch. 12, was held an answer to the action, although the fire arms had never been returned.—Lockhart *vs.* Dixon. Hil. 3 Vic.

INFANT.

An infant demandant may sue in dower, and if an infant tenant be sued, the parol is not allowed to demur.—Phelan *vs.* Phelan. Easter 1 Will. IV.

Where a father took shares in an adventure, (the building of a steamboat, to be navigated for the joint benefit of the owners,) in the name of his son, the an infant, and afterwards transferred two of the shares to the defendant, who received the dividends on them from the association. Held, that the son could not, on attaining his majority, maintain an action for money had and received against the defendant, for the amount of those dividends.—Hall *vs.* Bidwell. Michs. 3 Will. IV.

Infancy is not an inevitable difficulty within the fifteenth section of the Regis-

try Act, so as to preclude the necessity of an infant devisee registering the Will, within six months from the death of the devisor, to avoid a conveyance by the heir at law.—McLeod *vs.* Truax. Hil. 7 Will. IV.

INFORMATION.

See also CRIMINAL INFORMATION.

Where to an information for the condemnation of goods as illegally imported, the defendant pleaded that they were not imported mode et forma, and on the trial offered to prove, under this issue, that the goods were landed through stress of weather, but was not allowed to do so, and the jury found for the Crown, a new trial was granted, the court considering that the evidence should have been received.—The Attorney General *vs.* Spafford. Hil. Will. IV.

In an information for an intrusion, the venue may be laid in any District.—The Attorney General *vs.* Duckstader. Michs. 7 Will. IV.

Where, in an information for an intrusion, the defendant justifies under a third person, he must shew his own title, and that of the person under whom he justifies, and also traverse the title in the Crown.—The Queen *vs.* Gould. Hil. 3 Vic.

INSOLVENT DEBTOR.

Payment of the weekly allowance to a person acting as a Turnkey, is a good payment to the insolvent debtor.—Hyde *vs.* Barnhart. Hil. 10 Geo. IV.

Where a defendant, after obtaining the weekly allowance, takes the benefit of the limits, he must give the plaintiff notice of his return to close custody, before he is entitled to further payments.—*Ib.* Trinity, 11 Geo. IV.

The Court refused to discharge a defendant in execution, where the plaintiff died, and the weekly allowance was tendered by a person, who had usually paid it, although no administration had been granted.—Beard *vs.* Orr. Michs. 1 Will. IV.

On an application for the discharge of an insolvent debtor for non-payment of the weekly allowance, affidavits may be read, to shew that his answers to the interrogatories filed against him are untrue, and the Court must be *satisfied* with his answers, before they will order his discharge.—Montgomery *vs.* Rubinet. Easter, 2 Will. IV

An affidavit by a defendant in close custody, that he is not worth five pounds besides his necessary wearing apparel, is sufficient to obtain a rule for the weekly allowance.—Malone *vs.* Handy. Hil. 6 Will. IV.

A defendant in custody in execution, for a sum not exceeding £100, is not entitled to his discharge under 5 Will. IV. ch. 3, unless he has been twelve months in confinement *in gaol*.—Denham *vs.* Talbot. Hil. 6 Will. IV.

It is not a sufficient excuse for the non-payment of the weekly allowance, that the defendant is in custody in other suits, on which he receives the allowance, or that a co-defendant has put in bail, after the order for the weekly allowance was granted.—Truscott et al. *vs.* Walsh et al. Hil. 6 Will. IV.

An insolvent debtor charged in execution, in case for seduction, is entitled to relief under 5 Will. IV. ch. 3. Hil. 6 Will. IV.

Payment of the weekly allowance, after answers have been filed to the interrogatories put by the plaintiff, is a waiver of any objections to the answers, and the plaintiff cannot file further interrogatories without leave of the Court.—Malone *vs.* Handy. Trinity, 6 and 7 Will. IV.

A defendant in custody for a debt not exceeding £20, is entitled to his discharge under 5 Will. IV. ch. 3, on satisfying the Court that he has been imprisoned three months, but the rule is not absolute in the first instance.—King *vs.* Keogh. Michs. 7 Will. IV.

A defendant rendered by his bail, after the return of non est inventus to the capias ad satisfaciendum, is not in custody in mesne process, nor is he charged in execution, so as to obtain the weekly allowance.—Lyman et al. *vs.* Vandecar. Michs. 2 Vic.

The answers of a defendant in custody to interrogatories put to him by the plain-

tiff, after an order for the payment of the weekly allowance, must not only be full, but satisfactory.—Sanderson *vs.* Cameron. Easter 2 Vic.

The plaintiff may file interrogatories after he has made default in the payment of the weekly allowance, and before the defendant has made any application for his discharge.—Elwood *vs.* Monk. Butler *vs.* Thomas. Michs. 3 Vic.

INSPECTION OF BOOKS.

A stockholder is not entitled as a matter of right, to inspect the Stock Book or other Books of a Bank, nor will the Court, although they have the power, grant a mandamus for that purpose, unless some special ground be disclosed to warrant it.—In re Bank U. C. Hil. 10 Geo. IV.

INSURANCE COMPANY.

Where, in the declaration in an action against an insurance company, it was averred that certain affidavits, necessary according to the terms of the policy, were made by A. and B. Held, that such averment was material, and that proof of affidavits, made by other persons, was insufficient.—Aldermann *vs.* West of Scotland Insurance Company. Hil. 6 Will. IV.

INTERLOCUTORY JUDGMENT—See PRACTICE.

INTRUSION.

In an information for intrusion, the venue can be laid in any District.—The Attorney General *vs.* Dockstader. Michs. 7 Will. IV.

Where, in an information for an intrusion, the defendant justifies under a third person, he must shew his own title, and that of the person under whom he justifies, and also traverse the title of the Crown.—The Queen *vs.* Gould. Hil. 3 Vic.

A continuance in possession of land, under an erroneous impression that it was their own, of intruders, as against the King, after grant made, is not a disseisin of the grantee.—Doe West *vs.* Howard. Hil. 7 Will. IV.

IRREGULARITY—See PRACTICE.

JOINT STOCK COMPANY.

A partner in a joint stock company, the notes of which are suppressed by 7 Will. IV. ch. 13, having retired their notes which were in circulation, after the suppression, cannot put them into circulation again, so as to bind the partnership.—Hall. *vs.* Buck. Trinity, 2 and 3 Vic.

JOINT TENANCY.

Mortgagees are not trustees, under 4 Will. IV. ch. 1, sec. 48, so as to take jointly, when the Deed is silent as to the tenancy created.—Doe Shuter et al. *vs.* Carter. Hil. 2 Vic.

JUDGE.

A judge in chambers has power to set aside judgment and execution against the casual ejector in ejectment.—Popplewell dem. Capreol *vs.* Roe. Trinity, 6 and 7 Will IV.

An order may be made on a verified copy of a judge's summons, where the original is served by mistake.—Tift et al. *vs.* Wallace et al. Michs. 2 Vic.

A summons granted in vacation, returnable on a day, which falls within the term will be made absolute, by the judge who granted it.—Masson et al. *vs.* McQueen. Trinity, 2 and 3 Vic.

JUDGMENT.

Arrest of.—In an action for use and occupation, an averment that, one A. B. occupied the premises at the special instance and request of the defendant, was held to imply a sufficient allegation of a permission by the plaintiff to occupy, on motion in arrest of judgment, after judgment by default.—Moffatt *vs.* McCrae. Michs. 10 Geo. IV.

Award.—Where a verdict was taken by consent, subject to a reference, and an award being made in vacation, judgment was entered by the plaintiff before the first day of the next term, the proceedings were set aside for irregularity.—Vincent *vs.* McLean. Easter, 11 Geo. IV.

Arrest of.—In a qui tam action to recover penalties under the Imperial Statute 6 Geo. IV. ch. 114, which gives the penalty, one-third to the King, one-third to the Lieutenant Governor, and one-third to the informer, the court refused to arrest the judgment, on the ground that the plaintiff claimed the penalty for himself

and the King only.—Jones q. t. *vs.* Chase. Hil. 1 Will. IV.

Bar.—A judgment recovered for a defect in pleading, in matter of form, is no bar to another action.—Baker *vs.* Booth. Hil. 2 Will. IV.

Lien.—A judgment is not a lien upon lands for the purpose of an elegit, so as to avoid the effect of a writ of fieri facias against lands, issued on another judgment subsequently entered, but placed in the sheriff's hands before the elegit.—Doe Henderson *vs.* Busteed. Easter, 2 Will. IV.

Arrest of—Judgment cannot be arrested, after judgment is given on a demurrer.—Wragg *vs.* Jarvis. Trinity, 6 and 7 Will. IV.

Lien.—Lands are bound only from the delivery of the writ against them to the sheriff, and a judgment is no lien upon them. — Doe McIntosh *vs.* McDonell. Trinity, 5 and 6 Will. IV. Doe Auldjo *vs.* Hollister. Easter 2 Vic.

District Court.—The judgment of a district court cannot bind lands for want of a docket.—Doe McIntosh *vs.* M'Donell. Trinity, 5 and 6 Will. IV.

JURY.

Special.—The costs of a special jury are costs in the cause, and not costs of the day.—Whitehead *vs.* Brown. Hil. 2 Will. IV.

Special.—A special jury cannot be struck after the commission day of the assizes, but it is no objection to such a jury, that the sheriff has not summoned sixteen jurors, if a sufficient number attend to try the cause. Quære, should not a venire and distringas issue in such a case. —Moury *vs.* Maynard. Michs. 6 Will. IV.

Special.—Where a special jury was improperly struck, but the defendant's attorney was present, and made no objection. Held, that he could not afterwards, on that ground, move for a new trial.—Shipman *vs.* Birmingham. Hil. 7 Will. IV.

Special.—After a special jury has been struck, it is irregular to try by a common jury.—McMartin *vs.* Powell et al. Michs. 3 Vic.

JUSTICES OF THE PEACE.

District Funds.—Justices of the Peace cannot apply the District funds, to building a new Gaol and Court House, without an act of Parliament, specially authorising them to do so.—Rex *vs.* Justices of the Newcastle. Trinity, 11 Geo. IV.

Criminal Information.—A criminal information against a Justice of the Peace was refused, where the affidavits on which the motion was made were entitled, and more than two terms had elapsed since the act done, no notice having been given to the Justice of the intention to move, and the motion being made too late to allow him to answer the same term.—Busteed *vs.* Scholfield. Michs. 5 Will. IV.

Action.—In an action against a justice for an act done in the execution of his office, and judgment by default, it is unnecessary to prove notice of action, or that the suit was commenced in due time, —Mills *vs.* Monger. Hil. 6 Will. IV.

Bye-Law.—Where a Statute gives Justices power to make bye-laws, and impose penalties for their infraction, they cannot unless expressly authorized, levy such penalties by distress.—Kirkpatrick *vs.* Askew. Hil. 7 Will. IV.

Contempt.—A Justice of the Peace may commit for contempt, while in the execution of his office out of Sessions, but the commitment must be by warrant in writing, and for a specified period.—Jones *vs.* Glasford. Michs. 2 Vic.

Bail.—Although a Statute may require the presence of *three* Justices to convict of an offence, yet *one* has power to bail the offender, and a second arrest for the same charge, by the same complainant, before the time appointed by the justices for the hearing, is illegal.—King *vs.* Orr. Easter, 2 Vic.

KING.

A tenant in fee may surrender his estate back to the King, by act and operation of law, as by accepting a new grant for the same land, or he may surrender by matter of record, but a surrender not of record, or a surrender by record, founded on an invalid title, is insufficient.—Doe McDonell et al. *vs.* McDougall. Trinity, 3 and 4 Will. IV.

The statute of limitations does not run against the King, and a continuance in possession of land, under an erroneous impression that it was their own, of intruders as against the King, after grant made, is not a disseisin of the grantee.—Doe West *vs.* Howard. Hil. 7 Will. IV.

LANDS.

Lands held in fee by a debtor at the time of his decease, may be legally taken in execution, and sold in the hands of his executors, on a judgment against them for his debt.—Forsyth *vs.* Hall. Hil. 1 Will. IV.

Semble, a person claiming lands under a Sheriff's Deed, sold at the suit of an alien, is entitled to recover in ejectment, notwithstanding 5 Geo. II. ch. 7, it being necessary to take the objection of alienage, if available at all, before execution executed.—Doe Richardson *vs.* Dickson. Hil. 2 Will. IV.

A judgment is not a lien upon lands for the purpose of an elegit, so as to avoid the effect of a fieri facias against the lands, sued out on another judgment subsequently entered, but placed in the Sheriff's hands prior to the elegit.—Doe Henderson *vs.* Bentick. Easter, 2 Will. IV.

Lands are assets in the hands of an executor, under 5 Geo. II. ch. 7, for the satisfaction of debts, and to a plea of plene administravit, the plaintiff may reply lands.—Gardiner *vs.* Gardiner. Trinity, 2 and 3 Will. IV.

A judgment against an executor to recover de *bonis* testatoris, will warrant an execution against the testator's *lands*, on the return of nulla bona to the writ against goods.—Doe Jessup *vs.* Bartlett. Trinity, 3 and 4 Will. IV.

Lands are bound under 5 Geo. II. ch. 7, only from the delivery of the writ against them to the Sheriff.—Doe McIntosh *vs.* McDonell. Trinity, 5 and 6 Will. IV.

A purchaser of lands on an execution at Sheriff's Sale, is entitled to recover in ejectment against the debtor or his representative, without proof of the debtor's title.—Doe Fisher *vs.* Chesser et al. Easter, 1 Will. IV.

Land which has not been described by the Surveyor General, is not liable to be sold for taxes, and a party claiming under a Sheriff's deed of land sold for taxes, must shew that there was no sufficient distress on the land to discharge the taxes, although he need not show that all the necessary formalities were attended to, such as advertising, &c., and the deed may be made by the Sheriff to the assignee of the highest bidder.—Doe Bell *vs.* Orr. Hil. 7 Will. IV.

A purchaser at sheriff's sale of lands sold under an execution, may maintain ejectment, without taking actual possession.—Doe Wilkes *vs.* Jones. Trinity, 1 and 2 Vic.

LEASE.

See also EJECTMENT.

A distress may be made for rent for a sum certain, reserved in a lease payable in produce at market price.—Thompson *vs.* March et al. Hil. 2 Will. IV.

The word demise in a lease contains an implied covenant, that the lessee shall peaceably enter and enjoy, and it is sufficient in an action on the lease to state the breach of such implied covenant, without having before or otherwise referred to it in the declaration.—Smart *vs.* Stuart. Trinity, 6 and 7 Will IV.

The statute 4 Will. IV. ch. 1, sec. 53, applies only to tenants holding over after the expiration of a term, and not to a tenancy at will.—Adnerant *vs.* Shriver. Trinity, 6 and 7 Will. IV.

Where a lessee took a lease of premises for two years, and covenanted to leave the premises without notice, at the end of that time. Held that on ejectment brought by the lessor at the end of the term, the lessee could not set up a former lease to him for a longer period —Doe Wimburn *vs.* Kent. Hil. 7 Will. IV.

A. being seized in fee of lands, made jointly with B. a lease of those lands to C. taking promissory notes from C. for the rent, payable as it would become due; the day after the execution of the lease, A. died intestate, and then B. died, and B.'s executors sued C. on the notes. Held that they could not recover, the consider-

ation, on which the notes were given, having failed.—Merwin et al. *vs.* Gates. Easter, 7 Will. IV.

A person taking a farm on shares for a specific term, is a lessee, and entitled to six months notice to quit.—Doe Bunnill *vs* Link. Easter 7 Will. IV.

A lease for life for a nominal rent, not under seal, although it cannot pass a freehold interest, will operate as a lease from year to year, and the lessee cannot be dispossessed without six months notice to quit.—Doe Lawson *vs.* Coutts. Easter, 7 Will. IV.

A term of years cannot be sold under a Fieri Facias against lands.—Doe Court *vs.* Tupper et al. Trinity, 1 and 2 Vic.

Where a tenant holds over after the expiration of his lease, his landlord has a right to take possession of the premises, if he can without a breach of the peace.—Boulton *vs.* Murphy et al. Easter, 2 Vic.

LEGACY.

The assent of an Executor to a legacy may be by implication, as well as by express words, and where the testator devised his house to his wife for life, and also left her some personal property, and the Executors in her absence entered the house to make an inventory of the property, and afterwards turned out her daughter, and shut the house up. Held on trespass brought by the wife, that this was sufficient proof under the issue of excess.—Honsberger *vs.* Honsberger et al. Hil. 7 Will. IV.

LEGISLATIVE COUNCILLOR.

A Legislative Councillor should be proceeded against by bill and summons, although he is sued jointly with others, and if he is sued by capias, the motion should be to set aside the writ as to him, and not to set aside the service.—Hincks *vs.* Crooks. Easter, 2 Vic.

LIBEL.

Justification.—In an action for libel, the publication given in evidence, consisted of the report of a trial in a newspaper, of which the defendant was Editor and Publisher, together with his comments thereon. The libellous matter set forth in the declaration, was altogether contained in the comment, and at the trial, the defendant gave in evidence under the general issue, in justification of his comments, that the report of the trial was correct, and obtained a verdict, but the court, considering that this evidence was inadmissible, granted a new trial without costs. Small *vs.* McKenzie. Trinity 11 Geo. IV.

Inducement.—Where in a declaration in case for libel, the plaintiff set out with an inducement of character as "a physician and surgeon licensed to practice according to the laws of this Province," it was held, that proof that he acted as such was insufficient, without shewing a licence, but that as he was libelled in his private character, he was entitled to recover on that ground, notwithstanding the failure of proof of the other averment, and the omission of part of the libel, which did not alter the sense was considered immaterial. — Burwell *vs.* Hamilton. Hil. 2 Will. IV.

Privileged Communication. — An action for a libel, will not lie against one of the signers of a petition to the Lieutenant Governor, alleging that the plaintiff, as a Commissioner of the Court of Requests, had acted corruptly and partially, although the charges turn out to be unfounded, and the defendant had obtained the signatures to the petition, of individuals, who knew nothing of the charges contained in it, such a petition being a highly privileged communication. — Stanton *vs.* Andrews. Trinity, 6 and 7 Will. IV.

Joint Publication.—A joint action may be maintained against several persons, for the joint publication of a libel.—Brown *vs.* Finlay et al. Easter, 2 Vic.

Criminal Information.—Where a party on moving for a criminal information for a libel, swears that the libel was published of him, and in his affidavit sets out the libel, which does not charge him in express terms, nor is made to refer to him by inuendo, the Court will grant the rule, and a verified copy of a letter containing the libel is sufficient to move upon, without the production of the original. — Regina *vs.* Crooks. Michs. 3 Vic.

Criminal Information.—A criminal information for a libel must be signed by the master of the Crown office.—*Ib.* Hil. 3 Vic.

LICENCE OF OCCUPATION.

A person holding land under a licence of occupation from the Crown at a nominal rent, is entitled to a demand of possession before ejectment brought, by the grantee of the Crown in fee.—Doe Green *vs.* Friesman. Trinity, 1 and 2 Vic.

LIEN.

A judgment is not a lien upon lands in this country.—Doe McIntosh *vs.* McDonell. Trinity, 5 and 6 Will. IV.

A builder has no lien upon a house built by him, on the land of his employer, for the price of the building. — Johnson *vs.* Crew. Trinity, 6 and 7 Will. IV.

LIMITATIONS, STATUTE OF.

The Statute of Limitations does not begin to run against a plaintiff, absent from the Province at the time the cause of action accrued, until he comes here.—Forsyth *vs.* Hall. Hil. 1 Will. IV.

A. and B. having received grants from the Crown for adjoining lots, A. inadvertently occupied, fenced and improved a portion of B.'s lot, according to the mode of running side lines, prescribed by 58 Geo. III. ch. 14, believing it to be a portion of his own lot; some years after B.'s lot was confiscated under the alien act 54 Geo. III., ch. 9, and sold under 58 Geo. III. ch. 12. A. and those claiming under him, had held the disputed tract upwards of twenty years, at the time of action brought, but not at the time B's estate was confiscated, and the Crown became seized by inquest of Office. Held that A's occupation did not work a disseisin of B., and that B. continued seized, so as to entitle the Crown to that portion of his lot in A's possession, and that the bargainee of the Crown Commissioners could maintain ejectment, against the occupiers thereof.—Doe *vs.* McDonell. Easter 1 Will. IV.

To a plea of the statute of limitations in assumpsit, a replication that the defendant was a Sheriff, and that the amount claimed was an overplus, remaining in his hands, of money levied under a Fieri Facias, was held bad on general demurrer, although the plaintiff might have evaded the statute, had she declared in case.—Ruggles, administratrix *vs.* Berkie. Hil. 2 Will. IV.

Where to an action on a promissory note, payable to bearer, the defendant pleaded, actio non accrevit, and the plaintiff replied, that he was in foreign parts, when the action accrued, and issue was joined thereon. Held that on proof that the plaintiff received the note in this Province, the verdict should have been for the defendant, and the Jury having found for the plaintiff, a new trial was granted without costs.—Shaw *vs.* Mathison. Hil. 3 Will. IV.

When the Statute of limitations once begins, it continues to run, notwithstanding any subsequent disability.—Doe Dixon *vs.* Grant et al. Easter, 4 Will. IV.

The statutes of limitations do not run against the Crown.—Doe West *vs.* Howard. Hil. 7 Will. IV.

In case for fraudulent misrepresentation the Statute of limitations begins to run from the time of the misrepresentation, not from the time of its discovery.—Dixon *vs.* Jarvis. Michs. 2 Vic.

A plea, that the defendant and plaintiff, were both resident in a foreign country, when the cause of action accrued, and that by the laws of that country, the defendant is discharged, because no action was brought there within six years, the defendant and plaintiff having both resided there during all that time, was held bad on general demurrer.—Hart *vs.* Wilson. Trinity, 2 and 3 Vic.

LIMITS.

The demand on a debtor on the limits for a statement of his effects, if in writing, must be signed by the plaintiff or his Attorney, and the rule nisi for his commitment personally served.—Meighan *vs.* Reynolds. Michs. 5 Will. IV.

A prisoner in custody for contempt, may have the benefit of the limits.—Rex *vs.* Kidd. Hil. 6 Will. IV.

The gaol limits of the City of Toronto, do not include the liberties of the City.—King *vs.* Latham. Hil. 7 Will. IV.

Debtors in custody on Mesne, as well as on final Process, may have the benefit of the limits.—Montgomery *vs.* Howland. Easter 2 Vic.

MAGISTRATE.

See also JUSTICE OF THE PEACE.

The Court would not grant a new trial, where the plaintiff had been nonsuited, owing to the absence of a material witness from Court, the action being against a Magistrate, for an act done, while in the execution of his office.—Stinson *vs.* Scollert. Michs. 2 Will. IV.

MALICIOUS ARREST.

In an action for a malicious arrest, an examined copy of the affidavit, on which the arrest was made, coming from the hands of the proper officer, and shewn to have been used in the cause, is sufficient to prove that it was made by the defendant.—Spafford *vs.* Buchanan. Hil. 4 Will. IV.

Case will lie for maliciously swearing in an affidavit of debt, "an apprehension that the plaintiff would leave the Province," if strong grounds be shewn, to negative any cause for the existence of such an apprehension.—Dunn *vs.* McDougall. Trinity, 6 & 7 Will. IV.

In case for a malicious arrest, the determination of the suit is sufficiently averred in the declaration, by stating that "the plaintiff recovered a certain sum for damages and costs, (under the provincial statute 2 Geo IV. ch 15, allowing a verdict and judgment for a defendant in set off) and that the defendant was in mercy, &c." without averring also, that "the defendant took nothing by his writ," and an averment, that the defendant maliciously obtained a judge's order to arrest the plaintiff, and issued a writ of capias ad respondendum, and endorsed it for bail, shews sufficiently that the writ was endorsed under the order.—Burnside *vs.* Wilcox. Trinity, 1 and 2 Vic.

In an action for a malicious arrest on a writ of capias ad satisfaciendum, it is not necessary to prove the judgment.—Crawford *vs.* Stennett. Easter, 2 Vic.

In case for a malicious arrest, where it was averred in the declaration, that the defendant "made the affidavit." Held that the averment was sufficiently proved by an examined copy of the affidavit, which was shewn to have been used in the cause, without producing the original affidavit, or proving that it had been sworn by the defendant.—FitzGerald *vs.* Webster. Trinity, 2 & 3 Vic.

MALICIOUS PROSECUTION.

In case for a malicious prosecution, the declaration stated the trial before the Hon. Levius P. Sherwood and A. McDonell, assigned by His Majesty's Letters Patent, to them and others named therein directed, and the record in evidence, was of a trial before the Honorable Levius P. Sherwood and others, his fellow-Justices, assigned by letters patent, directed to him and others, or any two of them, of whom he was to be one. Held no variance.—Prentice *vs.* Hamilton. Trinity, 1 and 2 Will. IV.

In an action for a malicious prosecution, it is not sufficient for the plaintiff to shew the prosecution and its abandonment to go to the jury, he must also shew want of probable cause.—Lapointe *vs.* Stennett. Trinity, 1 and 2 Vic.

MANDAMUS.

Where lands were sold under the assessment law, for the non-payment of taxes, on the 1st March, 1830, and on the 1st March, 1831, the owner of the land paid the amount of the purchase money and twenty per cent. besides, as required by the statute, to the deputy sheriff, who collected taxes for the treasurer of the district, who was then absent, and, a short time afterwards, the purchaser at the sale, demanded a deed of the land from the sheriff, who refused to give it, the Court refused a Mandamus to compel him, stating that the owner was in time, and if he were not, they would not interfere summarily, but would leave the purchaser to his action.—In re Sheriff Newcastle District. Easter, 1 Will. IV.

The Court will not grant a Mandamus to try the legality of the election of corporate officers, but will leave the parties complaining to an information in the na-

ture of a quo warranto.—In re Electors of Board of Police of Brockville. Easter, 3 Will. IV.

The Court will, if circumstances require it, issue a mandamus to a municipal corporation, to compel them to proceed in the trial of a contested election.—In re Denham *vs.* City of Toronto. Trinity, 4 and 5 Will. IV.

A mandamus was granted against the Clerk of a Court of Requests, to give up the books and papers of the Court, which he had refused to do, on being removed from office.—In re Lacroix. Michs. 6 Will. IV.

Where a person had been convicted before Justices of the Peace, and fined, and on an appeal to the Quarter Sessions, the Justices there admitted more evidence than had been heard on the conviction, and the accused party was acquitted, but on receiving the opinion of the Attorney General, that the additional evidence should not have been admitted, the Justices in Sessions confirmed the conviction, and ordered it to be recorded, but took no notice of the acquittal, the Court made absolute a rule for a mandamus commanding them to enter the acquittal.—Rex *vs.* Justices of Bathurst. Michs. 6 Will. IV.

A mandamus never issues, except to admit or restore some person to an ascertained right.—Barnhart *vs.* Justices Home District. Easter, 7 Will. IV.

MARRIED WOMAN—See BARON and FEME—FEME COVERTE.

MEMORIAL—See MORTGAGE.

MESNE PROFITS.

In Trespass for Mesne profits, the defendant may give in evidence in mitigation of damages, the value of buildings erected on the premises by him.—Lindsay *vs.* McFarlane. Michs. 10 Geo. IV.

In trespass for Mesne profits against the executrix of a Sheriff, a plea justifying the entrance on and seizure of the property, under an attachment directed to the testator, under the absconding Debtors' Act, against the estate real and personal of a stranger, was held bad on special demurrer, as amounting to the general issue. —Green *vs.* Hamilton. Hil. 3 Vic.

MILL—See WATER COURSE.

MONEY HAD AND RECEIVED.

Where money has been paid by a testator on an agreement for the purchase of lands, which the vendor has failed to complete, the money may be recovered back by the Executors, as money had and received to the use of the Testator.—Smart et al. *vs.* Brown. Easter, 2 Vic.

An action for money had and received may be maintained against a Sheriff, for money levied on an execution.—Shuter et al. *vs.* Leonard. Hil, 4 Will. IV.

Where a judgment was assigned to the defendant, for the joint benefit of the plaintiff and himself, and he received the whole amount of it. Held that the plaintiff could recover his share as money had and received.—Hooker et al. *vs.* McMillan. Michs. 5 Will. IV.

Where the plaintiff let to the defendants a farm on shares, by an instrument under seal, and the defendants covenanted to deliver to him a portion of the crop by a certain day, but before the day, sold the crop, and applied the money to their own use.—Held that the plaintiff could not rescind the contract and sue for his proportion as money had and received.—Ducat *vs.* Sweeney et al. Michs. 3 Vic.

MONEY PAID.

Where A. sold land to B. for £225, B. sold it to C. for the same sum, and C. sold to D., and it was agreed between A. C. and D., that D. should pay A. who thereupon discharged B. who discharged C., and A. agreed to take from D. land in payment of £200 of the purchase money, and took D.'s promissory note for £25, the residue, but having subsequently borrowed £95 of D. instead of receiving at once a deed for the land in payment of the £200, he took a bond, that a deed should be made to him on the repayment of the £95, by instalments, but having made default in the payment of these, he abandoned the bond and notes given by D. and brought an action against B. for the £225, as money paid to his use. Held that the action could not be maintained, A. having lost his remedy on D.'s bond through his own default, and

therefore having no right to make B. pay the money.—Holmes *vs.* Spencer. Easter, 3 Will. IV.

MORTGAGE.

A purchaser at sheriff's sale of lands sold on a judgment and execution, subsequent to a mortgage by the debtor in fee, cannot recover against the mortgagee in possession.—Doe Richardson *vs.* Dickson. Hil. 2 Will. IV.

Where a purchaser mortgages the land purchased to his vendor, to secure the purchase money, he cannot during the continuance of the mortgage, sue the vendor on a covenant in his conveyance for good title.—Huyck *vs.* McDonald. Michs. 4 Will. IV.

Where A. gave an absolute conveyance of land to B. to secure a sum of money lent by him to A., and B. gave a bond for its re-conveyance, on the payment of the money lent at a certain day, on ejectment brought by B. after a lapse of eight years, the Court ordered that proceedings should be stayed on the payment of principal, interest and costs, and refused to allow the plaintiff to include a simple contract debt, incurred on the security of the bond, because there was no writing respecting it, and the Statute 7 Geo. II., ch. 20, under which the proceedings were stayed, did not extend to it.—Doe Shuter et al. *vs.* McLean. Michs. 5 Will. IV.

Where in ejectment by a mortgagee, the tenant claimed possession under a lease from the mortgagor, and refused to attorn to the mortgagee (who demanded possession) and shewed no lease nor any certain holding. Held that he was not entitled to notice to quit.—Doe Samson *vs.* Parker. Hil. 5 Will. IV.

Where the instalments in a mortgage were for a larger sum than was advanced, and the mortgagee on discovering the mistake, gave an undertaking in a separate paper, not under seal, that only the correct sum should be demanded, and afterwards assigned the mortgage, and the assignee brought covenant against the mortgagor for non-payment of the instalments as set out in the mortgage, the Court refused to stay proceedings on pay. ment of the sum really due.—Baby *vs.* Milne. Hil. 6 Will. IV.

Lands were mortgaged, and at the time of redemption, by agreement between the mortgagor and mortgagee, the money was paid by a conveyance of the land, made by the mortgagor to a stranger, but the mortgage was not given up, nor was there a reconveyance, and some years afterwards the mortgagee conveyed the land in fee to another. Held that the grantee of the mortgagor must recover, and that if necessary, a re-conveyance would be presumed from the mortgagee. — Doe McLean *vs.* Whitesides. Easter, 6 Will. IV.

Where A. made a mortgage of his property to two persons at different times, and died after the time for payment in the first mortgage, without having redeemed either, and the first mortgagee having taken possession, sold to A.'s heir for a valuable consideration, who entered into possession and died, leaving B. his heir, who was also A.'s heir. Held that the second mortgagee having a mortgage of the equity of redemption only, could not bring ejectment against B. who was in by purchase and not by descent, and was therefore not estopped by A.'s deed. —Doe Gillespie *vs.* Macaulay. Hil. 7 Will. IV.

A. having purchased a lot of land, and paid several instalments of the purchase money, but having received no deed, assigned his right to B. taking a bond from him, that if he should obtain the deed, on the payment by A. to him of £100 in two years, he would convey the land to A. Held on ejectment brought by B. the two years having expired, that A. could not treat the bond as a mortgage, and redeem on the payment of the principal, interest and costs, under 7 Geo. II., ch. 20.—Doe Shannon *vs.* Roe. Hil. 7 Will. IV.

A judgment and execution in ejectment on a mortgage, will be set aside in favor of an innocent purchaser without notice, so as to enable him to redeem on payment of costs. — Doe Milburn *vs.* Sibbald. Michs. 6 Will. IV.

When the mortgagor is in possession, a mortgage may be presumed satisfied,

when twenty years have elapsed from the time limited for the payment of the mortgage money.—Doe McGregor *vs.* Hawke. Easter, 7 Will. IV.

It is not necessary in the memorial of a mortgage, to notice the proviso for redemption.—Hamilton *vs.* Lyons. Easter, 7 Will. IV.

A mortgagee will not be admitted to defend as landlord in ejectment, unless he can shew that the tenant is his mortgagor, or holds under his mortgagor.—Doe Malloch *vs.* Roe. Michs. 1 Vic.

The mortgagee of personal property, who suffers the mortgagor to remain in possession, and make use of the property as his own, long after the time limited for the payment of the mortgage money has expired, loses all right to the property as against the creditors of the mortgagor.—Street *vs.* Hamilton. Trinity, 1 & 2 Vic.

Mortgagees are not trustees, within 4 Will. IV, ch. 1, sec. 48, so as to take jointly, where the mortgage deed is silent as to the tenancy created.—Doe Shuter et al. *vs.* Carter. Hil. 2 Vic.

Debt does not lie for the first instalment in a mortgage, before the others are due.—Forsyth et al. *vs.* French, et al. Hil. 3 Vic.

NEW ASSIGNMENT.

A defendant has eight days to plead after a new assignment.—Unger *vs.* Crosby. Easter, 3 Will IV.

NEW TRIAL.

Where the Judge, at *Nisi Prius*, omits to note the evidence of an important fact, which he charges the jury, is proved, and on which the verdict is founded; quære, will the Court grant a new trial, after an affidavit is produced that such fact actually existed, without stating that it was proved at the trial.—Winchester *vs.* Cornell. Hil. 10 Geo. IV.

In case for slander, the Court will not grant a new trial, on the ground of the smallness of the damages.—Atkins *vs.* Thornton, Michs. 1 Will. IV.

A new trial was refused, where the jury had found that a Will had been revoked, upon conflicting evidence, the weight of which, in the opinion of the Judge who tried the cause, was against the finding.—Doe *vs.* Chisholm. Trinity, 11 Geo. IV.

After a demurrer had been decided against the plaintiff, and the same facts admitted by it, were found by the jury on the trial of other issues, a new trial, on the ground that the verdict was contrary to evidence, was refused.—Ives *vs.* Hitchcock. Easter, 1 Will. IV.

On a traverse of office, the issue was, whether Lane, an alien, was sued in fee, in 1812, of the lands in question. The traverser proved a *prima facie* title, and a possession was then proved in the alien, about twenty years before the trial: no conveyance, however, was produced, but a memorial of a mortgage for years from the alien to the original grantee of the Crown, under whose heir the traverser claimed, was proved: Held, not to be conclusive evidence of a seisin in fee by the alien, and the Judge at *Nisi Prius*, having left it to the jury under the evidence, to find whether the original grantee had conveyed to the alien in fee, which they negatived, a new trial was refused.—Rex *vs.* Theale. Hil. 1. Will. IV.

Quære, will the Court, after a verdict for the traverser, even on doubtful evidence, grant a new trial?—*Ib.*

Where, in trespass for taking oak staves, the plaintiff recovered £20, where the law on some of the facts, which were elicited at the trial, was doubtful, but it appeared that the plaintiff was entitled to recover something in that form of action, and the residue in another form of action, a new trial was refused, although a tender could have pleaded to the amount of the whole claim, if the action had been in the other form.—Ballard *vs* Ransom. et al. Trinity, 1 & 2 Will. IV.

Semble, after argument on motion for a new trial, the Court will allow a new ground to be taken by the party moving, if the justice of the case require it.—Vary *vs.* Muirhead. Trinity, 1 & 2 Will. IV.

A new trial was refused, where a plaintiff had been non-suited, owing to the temporary absence of his principal witness from the Court, the action being against magistrates, for an act done, while in the

execution of their office.—Stinson *vs.* Scollert et al. Michs. 2 Will. IV.

A new trial will not be granted, where the jury have found for the plaintiff, and the justice of the case appears clearly with him, because at the trial the greater weight of evidence was with the defendant on a plea of the statute of limitations.—McMillan *vs.* Fairfield. Easter, 2 Will. IV.

Where the plaintiff's damages were assessed at a less sum than the evidence warranted, the verdict was set aside, at his instance, on payment of costs.—Leonard *vs.* Pawling. Michs. 3 Will. IV.

Where a defendant put off a cause at nisi prius on payment of costs, and the costs not being paid, the plaintiff proceeded and obtained a verdict for a large amount, the Court on affidavits shewing that justice had not been done, granted a new trial although the defence was to reduce the plaintiff's claim by set off, and not against the claim itself.—Oliver *vs.* Stephens et al. Hil. 3 Will. IV.

When, after a verdict for the plaintiff, the Court had granted a new trial, there being reason to believe that justice had not been done, and the defendant did not avail himself of the second trial to make a defence, the Court refused again to interfere, no reason being shewn why the defendant did not avail himself of the second trial.—Ross *vs.* McNab. Michs. 4 Will. IV.

A new trial was granted after a verdict for plaintiff, on payment of costs, where the evidence at the trial for the plaintiff was not very satisfactory, and would have entirely failed, without the testimony of one witness, who, it was sworn, was a men of bad character, and had stated after the trial that he had been hired to give evidence, the defendant also swearing, that all that that witness had stated was false.—Talbot *vs.* McDougall. Michs. 5 Will. IV.

Where evidence was given to shew that a deed had been procured by fraud, and the jury negatived the fraud, but there seemed great doubt as to the correctness of their finding, a new trial was granted on payment of costs.—Doe Melvin *vs.* Gilchrist. Trinity, 5 and 6 Will. IV.

A new trial in ejectment, on the ground of the discovery of new evidence, was refused, the affidavits not being sufficiently explicit, and the Court stating that the defendant could bring an action to recover back possession, if his evidence could establish his title.—Doe Brown *vs.* Fraser, Hil. 6 Will. IV.

Where in ejectment on a question of the boundaries of lots, a Surveyor gave positive testimony in favor of the plaintiff, founding his evidence on the correctness of a line, run by himself, from a post which he had planted, and after some conflicting evidence, the Jury found for the plaintiff, a new trial was granted on an affidavit by the Surveyor, that he had since the trial discovered that he had been mistaken in the Post.—Doe Case *vs.* Magill. Hil. 6 Will. IV.

Where to debt on bond usury was pleaded, and a verdict found for the plaintiff, and at the same assizes, an action was tried on a mortgage between the same parties, to secure the money on the bond, the same defence set up, and the same evidence adduced, and the Jury found for the defendant, the Court refused to set the verdict on the bond aside.—Wilson *vs.* Hill. Hil. 6 Will. IV.

It is not a sufficient ground for setting aside a verdict and granting a new trial, that a cause was tried out of its order on the cause list, and in the absence of the defendant's Attorney and Counsel, unless it is also shewn that the defendant has some defence, which it is proper he should be allowed to urge.—Doyle *vs.* Fraser. Hil. 6 Will. IV.

Where a verdict was given for the plaintiff in trespass quare clausum fregit for a small amount, contrary to law and the Judge's charge. Held that the smallness of the damages was no objection to setting aside the verdict, which would under the circumstances have been conclusive of the parties rights.—Soper *vs.* March. Hil. 6 Will. IV.

A new trial was granted on payment of costs, where a defendant had done all in his power to reach the assizes in time with his witnesses, but had arrived about two hours too late, it being suggested also that

there were merits.—Harrington *vs.* Stone. Hil. 6 Will. IV

If there be a verdict for the plaintiff on the merits, a new trial will not be granted, because, technically, a verdict should have been found on some issues for the defendant, and where if a new trial were granted, a repleader would be awarded, and a verdict again found for the plaintiff. —Helliwell *vs.* Eastwood et al. Easter, 6 Will. IV.

A new trial will not be granted, on the ground that the jury who tried the cause, were summoned by a near relative of the party who obtained the verdict, and where a new trial has been once granted, the court will not again interfere on a verdict the same way, unless it be manifestly against justice.—Penn et al. *vs.* Ruttan. Easter, 6 Will. IV.

It is no ground for a new trial, that a witness, who was subpœnaed, did not attend, having been engaged on some public works.—Woodruff *vs.* Campbell. Trinity, 6 and 7 Will. IV.

Where verdicts were twice found for a defendant, a second new trial was refused. —Burnside *vs.* Wilcox. Michs. 7 Will. IV.

Where a new trial is granted on the payment of costs, and the costs are not paid, the rule to discharge the rule for new trial, and to enter judgment, is absolute in the first instance.—Drean *vs.* Smith. Trinity, 1 and 2 Vic.

In granting a new trial, the court imposed costs, because the ground on which it was granted, was not taken at nisi prius. —Griffiths *vs.* Welland Canal Company. Michs. 2 Vic.

Where a plaintiff was nonsuited in an action upon a bond, which had been filed as an exhibit at a previous trial, because he was unable to produce it, the non-suit was set aside, and a new trial granted on payment of costs, the bond having been afterwards found.—Muirhead *vs.* McDougall et al. Hil. 2 Vic.

The affidavit of the wife of a party to a cause, cannot be read on a motion for a new trial.—Henderson *vs.* Wallace. Easter, 2 Vic.

A party moving to enter a non-suit or for a new trial, cannot take an objection, which he did not urge at nisi prius.—Hall *vs.* Shannon. Easter, 2 Vic.

NONPROS—See PRACTICE.

NONSUIT.

Non-joinder of a plaintiff in assumpsit is a ground of non-suit.—Walker et al. *vs.* McDonald. Michs. 5 Will. IV.

A plaintiff cannot elect to take a non-suit after a verdict rendered for the defendant, but before it is recorded.—Whiten et al. *vs.* Caverley. Hil. 6 Will. IV.

A plaintiff may be non-suited, although his evidence supports his pleadings.—McPherson *vs.* Hamilton. Easter, 7 Will. IV.

A party moving to enter a non-suit, cannot take an objection, which he did not urge at nisi prius.—Hall *vs.* Shannon. Easter, 2 Vic.

OVERHOLDING TENANT.

The statute 6 Will. IV. ch. 1, sec. 53, applies only to tenants holding over after the expiration of a lease, and not to a tenantcy at will.—Adnerant *vs.* Shriver. Trinity, 6 and 7 Will. IV.

Where a tenant holds over after the expiration of his lease, his landlord has a right to take possession, if he can without a breach of the peace.—Boulton *vs.* Murphy et al. Easter, 2 Vic.

PARLIAMENT.

See also HOUSE OF ASSEMBLY.

A member of the Provincial Parliament must be sued by bill and summons, and not by capias.—Phelps *vs.* McKenzie. Hil. 6 Will. IV.

PARTICULARS—See PRACTICE.

PARTITION.

A petition for a partition under 3 Will. IV. ch. 2 must be verified by affidavit and there must be an adversary party, although the suit be an amicable one, and one of the parties consenting to the partition, has to be dropped for that purpose. — Ex parte Robinson. Michs. 2 Vic.

PARTNERSHIP.

When on a dissolution of partnership one partner has admitted a balance, assumpsit will lie although there is no pro-

mise to pay, and in one case where the balance did not appear conclusively, and the Judge at nisi prius left it to the Jury, more unfavorably for the plaintiff, than he might have done, and there was a verdict for the defendant, a new trial was granted on payment of costs. — McNicol *vs.* McEwen. Easter, 4 Will. IV.

An action cannot be maintained by one partner against another, on an offer to pay a certain sum, if he would be allowed to keep the books and collect the debts. — Burgess *vs.* Fanning. Easter, 5 Will. IV.

A member of a Joint Stock Company, not incorporated, lending with the assent of the company, a sum of money out of the joint fund, to another member, and taking from him a promissory note, payable to himself individually, for repayment, can recover on the note, notwithstanding that the funds were advanced from the common stock. — Comer *vs.* Thomson. Trinity, 5 & 6 Will. IV.

A note given by a partner for a private debt in the name of the firm, is not binding on the firm.—Beals *vs.* Sheldon et al. Trinity, 5 & 6 Will. IV.

A. and B. representing themselves as partners, obtained C's accommodation indorsement to a note drawn by A. alone, but stated by B. to be drawn for their joint benefit, and on their joint liability; the note was discounted at a Bank, and C. was subsequently obliged to pay it, A. having in the mean time absconded.—Held that C. could not recover against B. on the note, but that he might maintain his action on the count for money paid.—Annis et al. *vs.* Lewis. Trinity, 6 and 7 Will. IV.

In an action of assumpsit for goods sold and delivered, a partner of the plaintiff not joined, is a competent witness for the defendant to prove payment.—Wilson *vs.* Stevens. Michs. 7 Will. IV.

A partner not joined as a defendant is not a competent witness, though released for his copartners, defendants, to prove payment.—Ferrie *vs.* Starkweather. Easter, 1 Will. IV.

One partner cannot maintain trover against another, for converting the partnership property.—Smith *vs.* Book. Trinity, 1 & 2 Vic.

A partner in a joint stock company, he notes of which are suppressed under 7 Will. IV. ch. 13, having retired those notes after the suppression, cannot put them into circulation again so as to bind the partnership.—Hall *vs.* Buck. Michs. 3 Vic.

PATENT—See GRANT.—CROWN GRANT.

PAYMENT.

In an action of debt on bond, where it appeared that there had been extensive dealings between the parties, independently of the bond, and that the defendant had sent to the plaintiffs, a large quantity of flour, which they promised to account for, when the price for which it sold was ascertained. — Held that under the pleas of solvit ad diem, and solvit post diem, the defendant could not give in evidence, the value of this flour, as a payment on the bond.—Maitland et al. *vs.* Secord. Trinity, 2 Geo. IV.

Where the promissory note of a judge of a district court was placed in the hands of an attorney for collection, and he agreed to give the judge credit on the note for fees payable by him for business done in the district court, and did endorse a part on the note as payment, and subsequently the whole amount was paid by fees, but the attorney refused to credit any more than the sum first endorsed, and afterwards absconded. Held in an action on the note, that the judge could not give the payment by fees in evidence against the plaintiff.—Ketchum *vs.* Powell. Easter, 3 Will. IV.

PEDIGREE—See EJECTMENT.—HEIR.

PENAL ACTION.

In a qui tam action under the Imperial Statute 6 Geo. IV. ch. 114, which gives the penalty one-third to the King, one-third to the Lieutenant Governor, and one-third to the informer, the Court refused to arrest the judgment, on the ground that the plaintiff claimed the penalty for himself and the King only.—Jones q. t. *vs.* Chase. Hil. 1 Will. IV.

Leave was given to compound a penal

action on stat. Hen. VIII. for buying pretended titles, on paying the Crown's share into Court.—Gray q. t. *vs.* Dettrick. Hil. 6 Will. IV.

PENAL STATUTE.

A penal statute is to be construed according to its spirit, and the rules of natural justice, not according to its very letter. Rex *vs.* McIntosh. Easter, 2 Will. IV.

PHYSICIAN—See LIBEL.

PLEADING.

Use and Occupation.—In an action of assumpsit for use and occupation, an averment, that one A. B. occupied the premises at the special instance and request of the defendant, was held to imply a sufficient allegation of a permission by the plaintiff to occupy, on a motion in arrest of judgment after judgment by default.—Moffatt *vs.* McCrae. Michs. 10 Geo. IV.

Limit Bond.—In an action on a bond to the limits by the assignee of the sheriff, a voluntary return, or surrender, or recaption by the sheriff before action brought, and before the assignment of the bond, is no plea in bar.—Evans *vs.* Shaw. Hil. 10 Geo. IV.

Covenant.—In covenant, the plaintiffs agreed to deliver two hundred toises of stone for the building of a wall, the defendant to pay six shillings and nine pence per toise, that is, for every two hundred and sixteen feet cubic measure laid in the wall, when it was erected; the plaintiff averred a delivery of one hundred and ninety five toises laid in the wall, but having omitted to aver how many toises at the rate of two hundred and sixteen feet to a toise in the wall, the declaration was held bad on demurrer.—Howe *vs.* Newman. Easter, 11 Geo. IV.

Bond.—Rent.—In debt on bond conditioned to pay rent, a plea that before the rent was due, the plaintiff assigned the premises to a third person, to whom the defendant paid the rent, was held good on demurrer.—McDougall *vs.* Young. Easter, 11 Geo. IV.

Libel.—When words are libellous in themselves, it is not necessary to aver that they were spoken of the plaintiff in any particular character, or in reference to any particular fact.—Bell *vs.* Stewart. Easter, 11 Geo. IV.

Promissory Note.—In an action on a promissory note, payable at a particular place, presentment at the place, when the note became due, must be averred:—Ferrie *vs.* Rykman. Hil. 10 Geo. IV.

Striking out Pleas.—The Court refused to strike out several special pleas, on the ground that they amounted to the general issue, which was also pleaded, and semble, the plaintiff should have demurred.—Truax *vs.* Christy. Trinity, 11 Geo. IV.

Trespass, Impounding Cattle.—Where, in trespass for seizing, impounding, and selling the plaintiff's horses, the defendant pleaded that they were damage feasant, &c., and the plaintiff replied, that, by the Township Regulations, fences should be five feet high, and that, the defendant's fences not being that height, but ruinous and out of repair, the plaintiff's horses escaped out of his close into the defendant's close, without the knowledge or consent of the plaintiff, the replication was held sufficient on general demurrer.—Ives *vs.* Hitchcock. Hil. 1 Will. IV.

Assault and Battery.—To trespass for an assault and battery, and wounding the plaintiff, and biting off his fingers, and count for a common assault, against two defendants, the general issue was pleaded by both jointly, but they severed in their pleas of justification, one defendant pleading, first, molliter manus imposuit to preserve the peace, the plaintiff and the other defendant being engaged fighting; secondly, the same, and that plaintiff was disturbing his family, &c., and the other, son assault demesne the special pleas of both being only to the first count, and the plaintiff having demurred specially, because the defendants, by the general issue, had *jointly* negatived the assault and battery, but by their special pleas, they had attempted to justify the same *separately*, the Court over-ruled the special demurrer, but held the pleas of molliter manus bad on general demurrer, they being no answer to the first count, and the plea of son assault demesne sufficient, and that if there had been any excess, that the plaintiff should have replied it to this plea.—

Shore *vs.* Shore. et al. Trinity, 1 & 2 Will. IV.

Demurrer.—Where the defendant demurred to a replication to a plea to one of several counts in a declaration, and the plaintiff, having recovered on the other counts, confessed his replication bad, and entered judgment as to that count for the defendant, the Court held that such proceeding was irregular, the proper course being to take no judgment on the pleadings demurred to, the plaintiff being entitled to recover independantly of these pleadings.—Rochleau *vs.* Bidwell. Hil. 2 Will. IV.

Limitations, Statute of.—To a plea of the Statute of Limitations, in assumpsit for money had and received, a replication, that the defendant was a sheriff, and that the amount claimed was an overplus remaining in his hands of money levied under a writ of *fieri facias*, was held bad on general demurrer.—Ruggles *vs.* Beikie.—Hil. 2 Will. IV.

Trespass.—Giving Color.—Where, in trespass quare clausum fregit and de bonis asportatis, the defendant makes title in his plea and gives color, the plaintiff cannot reply generally as to a plea of liberum tenementum, but must traverse the title alleged or reply specially, and to reply to a plea justifying the removal of goods, as encumbering the defendant's close, that the defendant was not lawfully possessed, or de injuria generally, when the defence pleaded rests upon a title or possession not connected with the personal conduct of the parties, is bad.—Thompson *vs.* Breakenridge. Easter, 3 Will. IV.

Right of Way.—A plea of right of way under a deed, must shew the parties to the deed.—Smith *vs.* Smith. Trinity, 3 & 4 Will. IV.

Bail Bond.—In a declaration by an assignee of a Sheriff on a bail bond, the venue in the margin was in the Home District, and several traversable facts were laid in the declaration with the same venue, but the assignment of the bail bond was stated at Sandwich in the Western District, without laying any venue for it in the Home District, the declaration was held bad on special demurrer.—Beals et al. *vs.* Fields et al. Trinity, 3 and 4 Will. IV.

Sheriff.—Assessment Law.—A declaration in case against a Sheriff for not conveying lands sold under the assessment law, in which the sale was stated to have taken place on the 22nd July, 1830, and that "afterwards and at the expiration of twelve calendar months, from the time of such sale, to wit on 22nd July, 1831, the plaintiff demanded a deed from the Sheriff," was held sufficient on general demurrer, and it was held also that it was unnecessary to aver in it, that there was no sufficient distress on the lands, or that the plaintiff had tendered a deed to the Sheriff for execution.—Spafford *vs.* Sherwood. Easter, 4 Will. IV.

Bond.—Averment.—In debt on bond conditioned on delivery of good *merchantable* grain to deliver a certain quantity of whiskey, an averment in the declaration of the delivery of good *distillery* grain was held bad on general demurrer.—Cowper *vs.* Fairman et al. Easter 4 Will. IV.

Trespass.—Plea.—Where a declaration in trespass contained two counts, the first for cutting down trees, and the second for carrying them away, and the defendant justified as to the cutting down the trees in the said declaration mentioned, because the close in which the said trees were growing was his soil and freehold, whereupon in his own right he committed the said several trespasses in the said close in which &c. and the plaintiff demurred specially because the introduction was inconsistent with the body of the plea, being in bar of only part of the trespasses, whereas the body was in bar of all, the plea was held sufficient.—Ostrom *vs.* O'Conner. Easter, 4 Will. IV.

Foreign Judgment.—A plea puis darrein continuance of a foreign judgment must shew that the cause arose since the last continuance, and that the judgment was on the merits, and conclusive between the parties in the Court or country where it was given.—McPhedran *vs.* Lusher. Trinity, 4 and 5 Will. IV.

Justification under Process—In justi-

fying an arrest under mesne process of the District Court, the cause of action should be averred within the jurisdiction and the writ shewn to be returned.—Bigcraft *vs.* Clarke.—Hill 5 Will. IV.

Bond.—Plea.—Debt on bond against two defendants, conditioned that A. as a Bank agent should account as often as he should be called upon. Pleas that before action brought, A. ceased to be agent, and that while he was agent he kept all the clauses, &c. in the condition—secondly, that A. paid the plaintiff the amount of the penalty in the bond. Held bad on general demurrer, the first plea not answering the condition, and the second not being pleaded as accord and satisfaction, nor any release shewn.—Bank U. C. *vs.* Bethune et al. Easter, 5 Will. IV.

False Imprisonment.—Plea.—In trespass for false imprisonment, a plea justifying under process of an inferior Court, which had been set aside for irregularity on the terms of no action being brought, cannot be sustained.—Ferris *vs.* Dyer, et al. Easter, 5 Will. IV.

False Imprisonment.—Plea.—In trespass for false imprisonment, a plea justifying under process from a District Court, must shew that an affidavit for a sum certain was filed to warrant the issuing of the process.—Ferris *vs.* Dyer et al. Hil. 6 Will. IV.

Bond.—Where in debt on bond conditioned that "the defendant his heirs and assigns should permit and suffer the plaintiff to cut down take and carry away, all the fire wood from certain lands, without let hindrance or molestation," the defendant pleaded that he always permitted, and the plaintiff replied that after the making of the bond, the defendant conveyed the land in fee to a stranger, who would not permit the plaintiff to cut the wood, &c., and the defendant demurred to the replication, the Court gave judgment for the demurrer, the replication having shewn no breach, the bond being a licence under seal binding on the defendant and his vendee, and not revocable by parol, and the plaintiff having shewn no obstruction. —Fowke *vs.* Fothergill. Easter, 5 Will. IV.

Description.—Several Issues.—In an action of breach of covenant to make a lease of premises, it is no ground for arresting the judgment that the premises are not particularly set forth, if the breach be as definitive as the terms of the covenant require, and where there are several issues raised, and the plaintiff has a verdict upon the whole record, it forms no good objection to his recovery, that some of the issues should have been found for the defendant, if there be sufficient without them to support the verdict, and they are not material.—Rowand *vs.* Tyler. Trinity, 5 and 6 Will. IV.

Trespass.— Description.— Plea.—In trespass for taking goods &c if they are not specifically set out in the declaration, it will be bad on general demurrer, and a plea justifying the taking of the goods of A. under a writ against the goods of B., and that divers goods of B. were in the possession of A., without averring them to be the same goods, is bad on special demurrer.—Friesman *vs.* Donelly et al. Hil. 6 Will. IV.

Award.—A breach in a declaration on an award for the payment of money on or before a certain day, that the money was not paid on the day, is sufficient on general demurrer, and it is not necessary to aver notice of an award.—Turner *vs.* Alway. Hil. 6 Will. IV.

Award.—In debt on bond conditioned to perform an award, a plea setting forth mere legal grounds of objection and concluding to the country, is bad, and if there be two separate parts in the award, matter which answers only one part cannot be pleaded in bar of both, and if two breaches be assigned in the replication, it will be sufficient on general demurrer, if one only can be supported.—Boyd et al. *vs.* Durand, Easter, 6 Will. IV.

Bond.—Plea.—A plea to debt on bond conditioned to convey land in the life time of a testator, brought by his executor, must negative the request of a conveyance by the heir or executor, as well as by the testator.—Hershey *vs.* Warren. Hil. 7 Will. IV.

Executor. — Declaration. — Where a plaintiff in his declaration styled himself

administrator of A. B. and laid promises to himself administrator as aforesaid, but did not aver any debt or promise to himself *as* administrator, nor make any profert of letters of administration, a plea of ne unques administrator was held bad on general demurrer.—Walker *vs.* Court. Hil. 6 Will. IV.

Trespass.—Plea.—Highway.—Where in trespass quare clausum fregit, to a plea of soil and freehold in the King, and a public highway thereon, the plaintiff replied soil and freehold in himself and not in the King. Held that the replication put in issue only the question of soil and freehold, the highway being admitted.—Helliwell *vs.* Eastwood et al. Easter, 6 Will. IV.

Escape.—In a declaration for an escape on a writ issued from a District Court, the making and filing an affidavit of debt to warrant the issuing of the writ, must be alleged.—Wragg *vs.* Jarvis. Munson *vs.* Hamilton. Easter, 6 Will. IV.

Escape.—Plea.—In debt for an escape, the Sheriff cannot plead satisfaction previous to the issuing the writ, from which the escape was made, in bar of the action. Munson *vs.* Hamilton. Easter, 6 Will. IV.

Trespass.—Liberum Tenementum.—The plea of liberum tenementum, to a declaration in trespass quare clausum fregit and carrying away the plaintiff's hay and corn, &c. is bad on demurrer.—Wilcox *vs.* Montgomery. Michs. 4 Will. IV.

Request.—The omission of an averment of a special request, where required, is matter of form only, and cannot be objected to on general demurrer.—McLeod *vs.* Jackson. Michs. 7 Will. IV.

Condition Precedent. — Where in a bond with a condition to convey land, no time is fixed for such conveyance, but the times for the payment of the purchase money are stated, the payment of the money is not a condition precedent to the execution of the deed.—Wilson *vs.* Dickie. Easter, 7 Will. IV.

Promissory Note. — In a declaration by the holder of a promissory note payable to bearer, it is not necessary to aver that the note was "assigned over" and delivered to the plaintiff.—Duggan *vs.* Borland. Hil. 6 Will. IV.

Bail—Plea.—A plea by bail to an action on their recognizance that they did not become bail, concluding to the country, is bad on special demurrer.—Burns *vs.* Grier et al. Easter, 7 Will. IV.

Bail—Plea.—A plea by bail to an action on their recognizance, that after the issuing of the Ca. Sa. against their principal, the plaintiff gave notice to the Sheriff not to arrest him, is bad on general demurrer. —Burns *vs.* Donnelly et al. Easter, 7 Will. IV.

Malicious Arrest.—In case for a malicious arrest under a judge's order an averment in the declaration that the defendant maliciously obtained the order, and indorsed the writ of Capias ad respondendum for bail, shews sufficiently that the writ was indorsed under the order.— Burnside *vs.* Wilcox. Trinity, 1 and 2 Vic.

De injuria.—A replication de injuria to a justification under a warrant is good. —Blair *vs.* Bruce. Trinity, 1 & 2 Vic.

Plea.—The defendant may in one plea refer to allegations in another, in the same manner as in separate counts in a declaration.—Beaton *vs.* McKenzie. Trinity, 1 & 2 Vic.

Executor—Probate.—Where to an action on a promissory note brought by an executor, the defendant having craved oyer of the letters testamentary, (which had been granted by the Surrogate Court of the Home District,) pleaded that at the time of the testator's death, the defendant resided in the London District, and that therefore the letters testamentary granted by the Surrogate Court of the Home District were void, and the plaintiff demurred, the Court gave judgment against the demurrer.—King *vs.* Claris. Hil. 2 Vic.

Assumpsit.—In assumpsit, the omission in the declaration of the statement to whom the promises were made, can be objected to only by special demurrer. —Miller *vs.* Munro. Easter, 2 Vic.

Executor.—Where a plaintiff sues in a representative character, the cause of

action must be stated in the declaration to have accrued to him as such representative.—Hawn et al. *vs.* Madden et al. Easter, 2 Vic.

Request.—Where no time is limited for the doing of an act, it must be done in a reasonable time, and a special request must be averred, but the omission of it is immaterial after verdict.—Daily *vs.* Stevenson. Easter, 2 Vic.

Assumpsit.—Readiness.—In a declaration against a miller for not delivering flour ground by him from wheat sent to him by the plaintiff, on an agreement that he would grind and deliver the flour at a reasonable price, the omission of an averment of a readiness to pay the price is bad on general demurrer.—Counter *vs.* Jones. Easter, 2 Vic.

No Ca. Sa.—A plea of no Ca. Sa. may conclude to the country.—Hall *vs.* Ruttan. Michs. 2 Vic.

Bond.—Inconsistent Pleas.—Non est factum and set off may be pleaded together to debt on bond.—Atkinson *vs.* Clark et al. Michs. 3 Vic.

Mesne Profits.—Justification.—Where in trespass for mesne profits against the executrix of a Sheriff, she pleaded a justification under a writ of attachment directed to the testator, under the absconding debtor's act against the estate real and personal of a stranger, under which the testator entered and remained in possession for the said time, &c. The plea was held bad on special demurrer as amounting to the general issue.—Green *vs.* Hamilton. Hil. 3 Vic.

POSTAGE.

On a letter carried by inland navigation from one post town to another, postage must be charged according to the distance the letter is actually carried, and not according to the distance between the two places by the post road.—Dickson *vs.* Crooks. Easter, 11 Geo. IV.

POST MASTER.

An action will lie against a post master for not sending a letter, but the plaintiff in his declaration must aver that the letter was his.—Campbell *vs.* McPherson. Michs. 3 Vic.

POUNDAGE.

See also SHERIFF.

A Sheriff is not entitled to poundage on a Fieri Facias against lands, where after the delivery of the writ to him, no money having been made upon it, the plaintiff and defendant compromise. — Leeming et al. *vs.* Hagerman. Hil. 6 Will. IV.

Where after a levy on an estreated recognizance, the Crown discharges the estreat on the payment of the Sheriff's fees, the Sheriff is entitled to poundage.—Regina *vs.* Vinning et al. Hil. 3 Vic.

PRACTICE.

Filing Papers.—No paper is regularly filed until it is marked "filed" by the proper officer. — Campbell *vs.* Madden. Michs. 11 Geo. IV.

Reviving Rule.—A rule nisi which had lapsed, was revived in the next term, on an affidavit that it had been served in the country, and was not returned until after the term.—Johnson *vs.* Durand. Hil. 10 Geo. IV.

Award.—Entering Judgment.—Where a verdict was taken in a cause by consent subject to a reference, and the award having been made in vacation, final judgment was entered before the first day of the next term, the proceedings were set aside for irregularity.—Vincent *vs.* McLean. Easter, 11 Geo. IV.

Judgment, as in case of a Non-suit.—The rule for judgment, as in case of a non-suit after a peremptory undertaking and default made, is absolute in the first instance.—Barham *vs.* Shaw. Easter, 11 Geo. IV.

Withdrawing Demurrer.—A defendant will not have leave to withdraw a demurrer after argument and judgment given, where the plaintiff has lost a trial.—Bell *vs.* Stewart. Easter, 11 Geo. IV.

Appearance.—If the defendant file common bail, it is a sufficient appearance to a non-bailable writ.—Grace *vs.* Meighan. Trinity, 11 Geo. IV.

Consolidation.—A rule was granted to consolidate several actions brought by a sheriff, on a bond to the limits.—Leonard *vs.* Merritt. Trinity, 11 Geo. IV.

Trial at Bar.—A trial at bar will not

be granted, merely because the party applying for it is a barrister.—Doe Palmer *vs.* Dickson Trinity, 11 Geo. IV.

Particulars.—Bond.—In debt on a bond to the limits, a rule for the particulars of the breaches will be granted.—Church *vs.* Barnhart. Trinity, 11 Geo. IV.

Striking out Pleas.—The Court refused to strike out several pleas, on the ground that they amounted to the general issue, which was also pleaded.—Truax *vs.* Christy. Trinity, 11 Geo. IV.

Mandamus.—Return to.—Upon a mandamus nisi, to Justices of the Peace, they should return the recorded proceedings had before them, and not collateral matter not embraced in the entries of the Court.—Rex *vs.* Justices Home District. Trinity, 11 Geo. IV.

Rule to return Fi. Fa.—A rule to return a Fi. Fa. cannot issue out of the office of a deputy clerk of the Crown in an outer District.—Anon. Michs. 1 Will. IV.

Time to Reply, &c.—If, after a demand of replication or rejoinder, the plaintiff or defendant requires time to reply or rejoin, he must obtain a Judge's order or a rule of Court, for that purpose.—Small *vs.* Mackenzie. Michs. 1 Will. IV.

Non-suit.—Where a cause was called on at Nisi Prius, and neither attorney nor counsel for the plaintiff appearing, the jury were sworn and the plaintiff was non-suited, the Court refused to set aside the non-suit except on the payment of costs.—Falls *vs.* Lewis. Hil. 1 Will. IV.

Amendment after Assessment of Contingent Damages.—Where there were issues in fact and law, and before any decision on the issues in law, the plaintiff proceeded to trial, and assessed contingent damages on the demurrer, and judgment was afterwards given against him on the demurrer, he was refused leave to amend.—Phillips *vs.* Smith. Hil. 1 Will. IV.

Notice of Motion.—Where notice is required to be given of an intention to move to set aside proceedings for irregularity, before damages are assessed, it is sufficient if it be given on the commission day of the Assizes.—Dougall *vs.* McLean. Hil. 1 Will. IV.

Appearance.—When the defendant appears by attorney, and the declaration is served on the attorney, but a notice of assessment on the defendant himself, the service of the notice is irregular.—Ferrie *vs.* Tannahill. Hil. 1 Will. IV.

Attachment.—Sheriff.—An attachment against a sheriff for not bringing in the body, after having been ruled so to do, cannot be granted by a Judge in Chambers.—Rex *vs.* Leonard. Hil. 1 Will. IV.

Information.—Putting off Trial.—On putting off the trial of an information for penalties, on the application of the defendant, costs will be imposed in the same manner as in civil cases.—Rex *vs.* Ives. Easter, 1 Will. IV.

Indorsement on Fi. Fa.—The Court will not interfere to reduce the amount endorsed to be levied on a Fi. Fa. on a merely legal ground.—Maitland *vs.* Secord. Easter, 1 Will. IV.

Time to Plead.—Particulars.—The defendant has the same time to plead after the delivery of particulars under a Judge's order, as he had when the summons for particulars was returnable.—Washburn *vs.* Fothergill. Easter, 1 Will. IV.

Time to Plead.—Attorney.—Where a bill is filed against an attorney in vacation, he has until the next term to plead.—McCanady *vs.* Foster. Easter, 1 Will. IV.

Judgment, as in case of a Non-suit.—The rule for judgment, as in case of a non-suit, after a peremptory undertaking to pay the costs of the day, and go to trial at the next Assizes, is absolute in the first instance, if the plaintiff fail in performance of either of the conditions.—Bergin *vs.* Whitehead. Easter, 1 Will. IV.

Term's Notice.—A term's notice is necessary before any further proceedings can be had, after four terms have elapsed after judgment by default.—Baker *vs.* Garret. Michs. 2 Will. IV.

Amendment.—Where a verdict was taken generally on a declaration, several counts of which were bad, but the plaintiff had abandoned the bad counts at Nisi Prius, and the verdict had been entered generally by mistake, the Court gave leave to amend by entering the verdict on the

good counts alone, without costs.———— *vs.* McDougall. Michs. 2 Will. IV.

Amendment.—Where a verdict was taken generally on a declaration, some of the counts of which were bad, but the evidence applied to the good counts only, the plaintiff was allowed to amend by entering his verdict on those counts alone.—Beasly *vs.* Darling. Michs. 2 Will. IV.

Service of Declaration.—It is irregular to file or serve a declaration before appearance or common bail filed, and the acceptance of a declaration by an attorney does not waive the irregularity.—Bullard *vs.* Wright. Michs. 2 Will. IV.

Interlocutory Judgment.—Semble, an interlocutory judgment is irregular without an incipitur on the roll.—*Ib.*

Appearance.—When one of two defendants was arrested, and the other served with process, and an application was made to set aside the arrest, which was not proceeded with, and the plaintiff entered an appearance for both defendants, as on serviceable process, and filed and served declaration and signed interlocutory judgment, the proceedings were set aside for irregularity.—Kauntz *vs.* Cameron, et al. Michs. 2 Will. IV.

Appearance.—Where a declaration was served on an Attorney, who had not appeared, and no appearance was entered for the defendant at all, but the Attorney did not deny that he was acting for the defendant, and the plaintiff afterwards signed interlocutory judgment, the Court set aside the proceedings without costs, but stated that they would on application make the Attorney pay them.—Dobie *vs.* McFarlane. Hill. 2 Will. IV.

Demurrer.—Interlocutory Judgment.—A plaintiff cannot treat a special demurrer as frivolous and sign judgment.—Soper *vs.* Draper et al. Hil. 2 Will. IV.

Appearance.—Semble, it is not irregular after an appearance in person to plead by Attorney.—*Ib.*

Amendment.—Leave was granted to amend the postea and judgment by the judge's notes who tried the cause, after an appeal moved and causes assigned, where the finding of the jury and judgment had been entered as if the general issue only had been pleaded to the declaration, without noticing several special pleas, a verdict having been taken subject to points reserved.—Rochlean *vs.* Bidwell. Hil. 2 Will. IV.

Appearance.—Where the defendant did not appear, and the plaintiff appeared for him without filing the writ and affidavit of service, and filed and served his declaration, the proceedings were set aside as void.—Forrestel *vs.* Graham. Hil. 2 Will. IV.

Appearance.—Appearance according to the statute by the plaintiff for the defendant must be filed as of the term the writ is returnable, and cannot be entered later than the end of the vacation of the Term after.—*Ib.*

Term's Notice.—A term's notice is requisite where four terms, although not a year, have elapsed without any proceeding, and where after issue joined in trespass against two defendants, and the lapse of nearly four terms, one of them was arrested under a judge's order, and put in special bail. Held that this was not such a proceeding as entitled the plaintiff to go on against the other defendant after four terms, without a term's notice.—Yale *vs.* Curney et al. Hil. 3 Will. IV.

Amendment.—An amendment was allowed without costs in an original Fieri Facias, after it had been placed in the Sheriff's hands, by altering it to a testatum and issuing an original to warrant it.—Fisher *vs.* Brooks. Easter, 3 Will. IV.

Pleas.—Filing.—Interlocutory judgment cannot be signed if pleas have been filed in the office from which the writ issued, although they have not been served.—McKinnon *vs.* Johnson. Easter, 3 Will. IV.

New Assignment.—A defendant has eight days to plead to a new assignment.—Unger *vs.* Crosby. Easter, 3 Will. IV.

Plea.—Where pleas were not entitled in the cause, nor signed by the Attorney, but were indorsed with the style of the suit and the Attorney's name, and were regularly filed and served, and the plaintiff treated them as a nullity and signed

interlocutory judgment, the Court set the judgment aside.—Averill et al. *vs.* Cameron. Easter, 3 Will. IV.

Stay of Proceedings.—After the service of non-bailable process, a Judge's order, obtained by the defendant for the delivery of particulars with a stay of proceedings does not operate so as to prevent the plaintiff from arresting the defendant on an alias writ.—Wilson *vs.* Wilson. Michs. 4 Will. IV.

Plea.—Filing.—It is sufficient to file pleas without serving them also; and where pleas had been filed and could not be found by the plaintiff when passing his record for trial. Held that it was irregular to enter them on the record without their being in the Crown office, or without leave from the Court or a Judge.—McKinnon *vs.* Johnson. Michs. 4 Will. IV.

Appearance.—Where the defendant appeared by attorney, but the appearance paper was mislaid in the Crown Office, and the plaintiff entered appearance according to the statute, and served a declaration on the defendant, and proceeded to final judgment, the proceedings were set aside for irregularity.—Ryan et al. *vs.* Leonard. Michs. 4 Will. IV.

Venue.—The Court will not allow the plaintiff to amend his declaration, by changing the venue after issue joined, unless under very special circumstances.—Crooks *vs.* House. Michs. 4 Will. IV.

Commencement of Action.—Semble, the declaration is the commencement of the action.—Leach *vs.* Stevenson. Michs. 4 Will. IV.

Staying Proceedings.—Where proceedings were stayed in a second ejectment, until the costs of a former one for the same premises were paid, and notwithstanding the plaintiff proceeded, the proceedings were set aside, and an affidavit made by the defendant, which, from its contents, was clearly to be considered as entitled as in the first cause, was held sufficient.—Doe Lake *vs.* Davis. Michs. 4 Will. IV.

Commencement of Action.—In case for a malicious arrest, where the action in which the arrest was made was still pending, when the writ in case was issued, but was concluded before declaration, the declaration, and not the writ, was held to be the commencement of the action.—Cameron *vs.* Ferguson. Hil. 4 Will. IV.

Setting aside Proceedings. — On motion to set aside proceedings for a defect in form, copies of the defective proceedings must be produced by the party applying.—Lount *vs.* Demens. Hil 4 Will. IV.

Particulars. — A rule for particulars will be granted absolute in the first instance, where it is shewn on affidavit that there has been a demand and refusal.—Butler *vs.* Richardson. Trinity, 5 Will. IV.

Interlocutory Judgment. — Where the plaintiff after notice of trial given in an action of debt, had leave to amend his declaration in one of the counts, and countermanded his notice, and not having served the amended declaration nor any new demand of plea, signed interlocutory judgment, and afterwards entered final judgment and issued execution, the proceedings were set aside for irregularity.—Randall. q. t. *vs.* Taggart. Michs. 5 Will. IV.

Interlocutory Judgment. — Where an interlocutory judgment was set aside by Judge's order, but notwithstanding the order, the plaintiff proceeded and assessed damages, the Court set the proceedings aside. — Staats *vs.* Reynolds. Michs. 5 Will. IV.

Term's Notice. — A term's notice is necessary after judgment by default where no proceedings have been had for four terms.—*Ib.*

Irregularity.—It is irregular for a plaintiff to proceed to trial, where there are issues joined on some pleas, and not on others.—Ferris *vs.* Dyer, et al. Michs. 5 Will. IV.

Non. Pros.—It is irregular to sign a judgment of non. pros. without filing the original papers in the judgment office.—Lyman *vs.* Cotter. Michs. 5 Will. IV.

New Trial.—Irregularity.—Where a new trial was granted on payment of costs by the plaintiff, who served three appointments for the taxation on the defendant, and the costs were at last taxed without

disbursements, and the plaintiff tendered the amount, which the defendant refused to receive without the disbursements, which the plaintiff would not pay, but proceeded again to trial, and obtained a verdict, the Court refused to set it aside.—Thompson *vs.* Sewell. Michs. 5 Will. IV.

Irregularity. — Where, after process served, the parties came to a settlement, and the plaintiff agreed to pay his own costs, but notwithstanding the attorney went on, thinking that the defendant should pay the costs, the proceedings were set aside for irregularity.—Parent *vs.* McMahon. Hil. 4 Will. IV.

Security for Costs.—In an affidavit for security for costs, it must be stated with certainty that the plaintiff is not resident within the jurisdiction of the Court.—Redden *vs.* McNab. Hil. 5 Will. IV.

New Trial.—Where there was a verdict for the plaintiff, and the defendant did not move for a new trial within the four days, owing to a misapprehension on the part of his counsel, that the plaintiff's counsel was to have disposed of the question of a new trial on the argument of a demurrer in the cause, without any rule, a rule nisi was granted nunc pro tunc.—Bank of Montreal *vs.* Bethune. Trinity, 5 & 6 Will. IV.

Contingent Damages.—Notice of Trial.—Where there are issues in fact and in law, a notice of trial only is sufficient to enable the plaintiff to assess his contingent damages.— Davis *vs.* Davis. Michs. 6 Will. IV.

Interlocutory Judgment.—An interlocutory judgment, in which the cause is not properly styled, is insufficient to sustain a notice of assessment, and in such a case it is not necessary to give a notice of an intention to move to set aside the proceedings, before assessment of damages, but if it be not given, the proceedings will be set aside without costs.—Allanson *vs.* Johnson. Michs. 6 Will. IV.

Judgment as in case of a Non-suit.—Where a cause came on to be tried in its turn, and the plaintiff not being ready, the defendant consented that it should be put at the foot of the docket, and it could not afterwards be tried for want of time, a rule for judgment as in case of a non-suit was refused.—Bank U. C. *vs.* Covert et al. Michs 6 Will. IV. Bank U. C. *vs.* Bethune et al. Michs. 6 Will. IV.

Judgment as in case of a Non-suit.—One of two defendants cannot move for judgment as in case of a non-suit.—Spafford *vs.* Buchanan et al. Michs. 6 Will. IV.

Judgment as in case of a Non-suit.—A rule for judgment as in case of a non-suit was discharged on the peremptory undertaking without costs, when owing to delay occasioned by an application of the defendant, the plaintiff had been prevented from entering the record for trial on the commission day at the Assizes, and the defendant refused to consent to its being entered afterwards, until the plaintiff's witnesses had gone home, and he knew that the plaintiff could not proceed to trial. —Penniman *vs.* Wince. Michs. 6 Will. IV.

Particulars. — Promissory Note.—Where a declaration contained a count upon a promissory note, and the common counts, and the plaintiff under an order for particulars, gave an account for goods sold and delivered only, but at the trial the defendant cross-examined upon the note, and afterwards at the close of the plaintiff's case obtained a non-suit, because the note was not mentioned in the particulars, the non-suit was set aside without costs.—Bigelow *vs.* Spragge. Hil. 6 Will. IV.

Appearance.—Where one of two defendants appears by Attorney, and the other does not, it is irregular to serve papers for both on the Attorney of the one.—Huff *vs.* McLean et al. Hil. 6 Will. IV.

Bail.—Attorney for.—Where a defendant was arrested and gave bail below, and the bail below put in bail above, the notice of which was signed by their Attorney as *defendant's* Attorney, and all the subsequent papers in the cause were served on his agent, and judgment was obtained and the defendant taken in execution, the Court on affidavits of these facts, and that the defendant had no knowledge of the proceedings, set them all aside with costs.—McMartin *vs.* McKinnon. Hil. 6 Will. IV.

Notice of Trial.—Notice of trial given instead of notice of assessment is irregular.—Billings et al. *vs.* Reid. Hil. 6 Will. IV.

Entry for Trial.—A cause cannot be entered either for assessment or trial after the commission day of the Assizes, without the consent of the defendant.—Hall *vs.* Griswold. Easter, 6 Will. IV.

Service of Papers.—It is irregular to serve papers on an Attorney's Clerk, at a distance from the Attorney's residence or place of business.—Tiffany *vs.* Bullen. Easter, 6 Will. IV.

Notice of Trial.—Where a demurrer was taken off the file as a dilatory plea by the order of a Judge, and the defendant having pleaded, the plaintiff proceeded to trial without serving a notice, but merely informed the defendent that the cause was entered for trial, and afterwards took a verdict, the Court set the verdict aside, the defendant having been entitled to short notice of trial.—Truscott et al. *vs.* Goldie et al. Easter, 6 Will. IV.

Irregularity.—Grounds of Motion.—A party applying to set aside proceedings for irregularity must come promptly, and if he first apply to a Judge in Chambers, he cannot afterwards move in term on any other grounds than those taken in his first application.—Arnold *vs.* Fish. Easter, 6 Will. IV.

Declaration.—Attorney's name.—It is not necessary that an Attorney's name should be subscribed to a declaration if it be stated in the commencement.—Crooks *vs.* Davis et al. Easter, 6 Will. IV.

Arrest of Judgment.—After judgment on a demurrer, judgment cannot be arrested.—Wragg *vs.* Jarvis. Trinity, 6 and 7 Will. IV.

Irregularity—Nolle Prosequi.—Where in trespass against several defendants, the plaintiff went to trial, after he had received notice, that the proceedings were irregular as to one of the defendants. Held that he could not *after verdict* cure the irregularity, by entering a nolle prosequi as to that defendant.—Campbell *vs.* Bruce et al. Michs. 7 Will. IV.

Appearance.—Where no appearance was entered, an interlocutory judgment was set aside after a year, the proceedings being void.—Lane *vs.* McDonell. Hil. 7 Will. IV.

Notice of Trial.—It is not sufficient to leave a notice of trial in the office of the defendant's Attorney, it must be left with some person doing business there.—Brewer *vs.* Bacon. Michs. 7 Will. IV.

Points Reserved.—When points are reserved at a trial and indorsed on the Record, but the Judge makes no entry thereof on his notes, the record must govern, and judgment cannot be entered until the points are disposed of.—Taylor *vs.* Taylor. Hil. 7 Will. IV.

Interlocutory Judgment—Demurrer.—A plaintiff who has demurred to a defendant's plea, and demanded a joinder, cannot sign interlocutory judgment for the want of such joinder, his proper course being to add it himself.—Murney *vs.* Heron. Easter, 7 Will. IV.

Computation.—A foreign bill of exchange may be referred to the master for the computation of the principal and interest and ten per cent. damages under the Provincial statute.—Com. Bank *vs.* Allen et al. Trinity, 1 and 2 Vic.

Computation.—Service of Rule.—The affidavit of service of a rule nisi to compute must shew (if a personal service be not effected) that the copy was served at the defendant's place of abode, on some grown up person connected with his household.—Mittleberger *vs.* Whitehead et al. Michs. 1 Vic.

Amendment.—Striking out Names.—Where in an action of replevin there were several defendants, and the plaintiff declared against them all, although only one had been served, an amendment was allowed by striking out of the declaration the names of those not served.—Zavitz *vs.* Hoover et al. Michs. 1 Vic.

Interlocutory Judgment.—An interlocutory judgment signed in the country, after the return of a Judge's summons in town which operated as a stay of proceedings, but of which the Attorney could not have been aware, was set aside as irregular, but without costs.—Carlisle *vs.* Niagara Harbor and Dock Company. Michs. 1 Vic.

Venue.—It is no sufficient ground for changing the venue, that a person who will be required as a witness at one Assize, will be an associate at another, and that the places where the two Assizes are to be held, are at such a distance from each other, that it will be impossible for him to attend at both.—Smith *vs.* Jackson. Michs. 1 Vic.

Time to Declare.—The plaintiff may take out a rule for a *month's* further time to declare.—Stebbins *vs.* O'Grady. Michs. 2 Vic.

Notice of Trial.—Where after issue joined and notice of trial given, the defendant has leave to plead de novo, the plaintiff cannot proceed to trial without a new notice.—McMillan *vs.* Fergusson. Michs. 2 Vic.

Judgment as in the case of a Non-suit.—The rule for judgment as in case of a non-suit after a peremptory undertaking and default made, is absolute in the first instance.—Mastin *vs.* Garrow. Michs. 2 Vic.

Appearance.—A defendant who has pleaded a plea which is a nullity, cannot object, as a ground for setting aside an interlocutory judgment signed after such plea, that there is no appearance entered. —Brewster *vs.* Davy. Hil. 2 Vic.

Time to Reply.—A plaintiff has eight days to reply after a demand of replication.—Robinson *vs.* McGrath. Hil. 2 Vic.

Term's Notice.—The rule that a term's notice must be given, where no proceedings have been had for four terms, does not apply to proceedings by a defendant. —Doe Young *vs.* Hinman. Doe Young *vs.* Smith. Hil. 2 Vic.

Judgment as in case of a Non-suit.—A rule for judgment as in case of a non-suit cannot be obtained, where there has been a trial, and if obtained, and the plaintiff enter into a peremptory undertaking, he is not bound by it.—Warren *vs.* Smith. Hil. 2 Vic.

Interlocutory Judgment.—It is not irregular to sign interlocutory judgment in the office of a Deputy Clerk of the Crown in the country at an hour, when by rule of Court the principal office in town is not open.—Hall *vs.* Hunter. Hil. 2 Vic.

Judgment as in case of a Non-suit.—The motion to discharge a rule for judgment as in case of a non-suit on the peremptory undertaking must be made in open Court, and be supported by affidavit. —Hollister *vs.* Barnhart. Hil. 2 Vic.

Filing Pleas.—It is not necessary that special pleas should be served, if they are filed it is sufficient.—King *vs.* Dunn. Easter, 2 Vic.

Consolidation.—Where after a rule to consolidate, the plaintiff had leave to amend his declaration by increasing his damages. Held that it was not necessary to serve the amended declaration nor a new demand of plea.—Ketchum et al. *vs.* Hamilton. Easter, 2 Vic.

Appearance. — If there be no appearance entered for the defendant, proceedings are void and not merely irregular.—Nichol *vs.* McKelvey. Easter, 2 Vic.

Judgment as in case of a Non-suit.—The Court will sometimes order that a rule for judgment as in case of a non-suit shall be absolute, unless the costs of the day are paid in a certain time.—Warren *vs.* Grant et al. Easter. 2 Vic.

Judgment as in case of a Non-suit.—Where the venue is laid in the country, a rule for judgment as in case of a non-suit will be granted, when two assizes have passed without the plaintiff proceeding to trial.—Start *vs.* Bullen. Easter, 2 Vic.

Staying Proceedings.—The Court refused to stay proceedings, until payment of costs in two other suits pending for the same cause.—Richmond et al. *vs.* Campbell. Easter, 2 Vic.

Venire.—Where there are issues in fact and in law, and both sets of issues go to the whole declaration, it is not necessary that the award of the venire on the Nisi Prius record should be tam ad triandum quam ad inquirendum. — Beatty *vs.* McMasters et al. Trinity, 2 and 3 Vic.

Time to Demur.—Where the last pleading concludes to the country, if the opposite party demur, he must file his demurrer within the time allowed to reply after a demand. — Regina *vs.* Gould. Trinity, 2 and 3 Vic.

Rules.—Parties names.—Rules as well as affidavits must be entitled with the

christian names of the parties to the suit in full. — McNeil *vs.* McNeil. Trinity, 2 and 3 Vic.

Non-suit.—Leave to Move.—If at Nisi Prius the defendant moves for a non-suit on a point which the judge overrules, but reserves leave to move, and the plaintiff's counsel does not object, his acquiescence to the leave reserved must be presumed. —Ducat *vs.* Sweeny et al. Trinity, 2 & 3 Vic.

Nolle Prosequi. — A Nolle Prosequi cannot be entered after judgment.—Roach *vs.* Potash et al. Michs. 3 Vic.

Appearance. — Where the defendant appeared by attorney, but the plaintiff having overlooked it, entered appearance for him according to the Statute, and served the declaration on himself personally. Held that after judgment by default and notice of assessment served on him, he was too late to object to the irregularity. — Ketchum et al. *vs.* Keefer. Michs. 3 Vic.

Filing Papers. — Leaving a demurrer with the proper officer to file is sufficient, although he does not actually file it.—Regina *vs.* Gould. Michs. 3 Vic.

Striking out Pleas. — Where in debt on bond, the plaintiff obtained a judge's order to strike out the plea of non est factum, but passed his Nisi Prius record with that plea on it, only annexing the judge's order to the record. Held that that plea still remained a part of the record, and notwithstanding the order annexed, the plaintiff must prove the bond. —Atkinson *vs.* Clarke et al. Michs. 3 Vic.

Rule Nisi.—A rule nisi does not operate as a stay of proceedings, unless so expressly declared in the rule.—Hastings *vs.* Champion et al. Michs. 3 Vic.

Setting aside Proceedings.—Where in debt on bond, and breaches assigned in the declaration, the plaintiff entered his verdict as if the action had been debt on simple contract, and entered judgment in assumpsit, and issued a capias ad satisfaciendum in debt, on which the defendant was arrested, the Court set the Ca. Sa. aside with costs, and allowed the plaintiff to amend on payment of costs.—Edison *vs.* Hogadone. Michs. 3 Vic.

Particulars.— Non. Pros. — After the defendant has obtained a rule for particulars, and the plaintiff has not delivered them, the Court will grant a rule that unless the plaintiff shall deliver them within a certain time, the defendant shall be at liberty to sign judgment of Non. Pros.— Shaver *vs.* Corry. Hil. 3 Vic.

Particulars. — Promissory Note. — Where a note is declared on, an error in its date, when given in a bill of particulars under a judge's order is immaterial.— Barney *vs.* Simpson. Hil. 3 Vic.

Particulars.— Promissory Note. — A promissory note declared on, need not be mentioned in a bill of particulars, and semble, particulars delivered after summons, but without any order for their delivery, do not bind.—Street *vs.* Cameron. Hil. 2 Vic.

Term's Notice.—No term's notice is necessary where more than four terms have elapsed after verdict, before the entry of judgment.—Russell *vs.* Miller. Hil. 3 Vic.

Irregularity.—Notice.— Where notice is required to be given of any irregularity, and the notice does not describe what the irregularity is, if the proceedings are set aside, costs will not be allowed.— Henderson *vs.* Jones. Hil. 3 Vic.

Appearance.—Where the plaintiff enters an appearance for the defendant according to the statute, he is not bound to take notice of any attorney for the defendant unless he pleads. — Gourlay *vs.* McLean. Hil. 3 Vic.

PRINCIPAL AND AGENT.

A general power of attorney to an agent to *sign* bills, notes, &c., and to superintend, manage and direct, all the affairs of the principal, gives him a power to *indorse* notes, and an indorsement to pay to the trustees of an insolvent firm, without naming them, is sufficiently certain, on shewing who they are, and that they act in that capacity, to vest the note in them, so as to give their indorsee the right of suing upon it. — Auldjo *vs.* McDougall. Trinity, 3 and 4 Will. IV.

PRINCIPAL AND SURETY.

A surety cannot sue a co-surety jointly with the principal, for the amount of a debt of the principal, which the surety has been obliged to pay.—Burnham *vs.* Choat et al. Easter, 2 Vic.

Where separate actions are brought against two sureties, the discharge of one does not operate as a discharge of the other.—Burwell *vs.* Edison. Michs. 3 Vic.

After a cognovit given by a principal and his sureties jointly, the Court will not set aside a judgment entered against all, because time has been given to the principal, without the consent of the sureties.—Mowat *vs.* Swizer et al. Michs. 3 Vic.

PRISONER.

Supersedeas.—Where a defendant in custody put off the trial of the cause at one assize by affidavit, and at the next being aware that the plaintiff had given no notice of trial, prevailed upon him to enter his record notwithstanding, and had it placed low on the docket, and the cause was not tried for want of time. Held that the defendant was not supersedable on the ground that the plaintiff had not proceeded to trial within three terms.—Gordon *vs.* Fuller. Hil. 6 Will. IV.

Discharge.—A defendant in custody for a sum not exceeding £100, is not entitled to be discharged under 5 Will. IV., ch. 3, unless he has been upwards of twelve months in close custody in gaol.—Denham *vs.* Talbot. Hil. 6 Will. IV.

Discharge.—A defendant charged in execution in case for seduction is entitled to relief under 5 Will. IV., ch. 3.—Perkins *vs.* O'Connolly. Hil. 6 Will. IV.

Discharge. — A defendant in custody for a debt not exceeding £20, is entitled to his discharge under 5 Will. IV., ch. 3, on satisfying the Court that he has been imprisoned three months, but the rule is not absolute in the first instance.—King *vs.* Keogh. Michs. 7 Will. IV.

Cognovit.—Where a debtor in custody executes a cognovit, it is not necessary that an attorney should be present on his behalf. — Lodor *vs.* Heathcote. Hil. 7 Will. IV.

Supersedeas. — A debtor discharged from custody by Supersedeas, the plaintiff not having charged him in execution in due time, cannot be taken again on the same judgment. — Burn *vs.* Straight. Trinity, 1 and 2 Vic.

PRIVILEGE—See PARLIAMENT—ARREST.

PROCESS.

Service.—Sheriff's Office.—A writ of capias ad respondendum can only be served by a Sheriff, or his lawful deputy or bailiff.—Whitehead *vs.* Fothergill. Trinity, 11 Geo. IV.

Dower.—A writ of capias ad respondendum is not the first or original process in Dower.—Phelan *vs.* Phelan. Easter, 1 Will. IV.

Corporation.—Canada Company.—Process to compel the appearance of the Canada Company could not be served on the Commissioners in this Province.—Cooper *vs.* the Canada Company. Easter, 1 Will. IV.

Service.—Sheriff's Office.—A writ of capias ad respondendum must be served by a Sheriff or one of his officers, even where the Deputy is a party to the suit.—Ruttan *vs.* Ashford. Michs. 4 Will. IV.

Teste.—Indorsement.—A writ issued in vacation must be tested the last day of the preceding term, and if bailable be indorsed with the sum sworn to, and on motion to set aside a bailable writ for irregularity, costs will be given, although the defendant has asked for more than the Court can give, as that a bail bond shall be delivered up, when no bail bond has been given.—Armstrong *vs.* Scobell. Michs. 4 Will. IV.

Notice to Appear.—Notice to appear in an outer District to process issued from the Home District, is irregular.—Forsyth *vs.* Hartwell et al. Hil. 4 Will. IV.

Indorsement.—A rule to set aside bailable process for want of an indorsement of the plaintiff's claim for debt and costs, was refused, where it appeared that the omission had been supplied two hours after the arrest, and before the application was made.—Smith *vs.* Smith. Michs. 3 Will. IV.

Service.—Where a judge's order was obtained by the agent of the defendants'

attorney to set aside the service of the process, and both the plaintiff's and defendant's attornies being ignorant of it, the first declared and the other pleaded, but on being aware of the order, the defendant's attorney gave notice to the plaintiff's attorney that he would move to set aside his proceedings for irregularity if he went on, the Court refused to set aside the proceedings, there being no affidavit of merits, and the defendant having precluded himself by his plea.—Simpson *vs.* Mathison. Ward *vs.* Ward. Michs. 4 Will. IV.

Indorsement.—Bailable process issued by an Attorney, plaintiff, must be indorsed with the claim for debt and costs.—Washburn *vs.* Walsh. Michs. 3 Will. IV.

Service.—Sheriff's Officer.—If a defendant accepts process, served by a person who is not a Sheriff's officer, he cannot afterwards on that ground set the service aside.—Arnold *vs.* Fish. Easter, 6 Will. IV.

Copy.—A true copy of non-bailable process must be served on the defendant. —Scott et al. *vs.* Hiffernan. Michs. 7 Will. IV.

Notice to Appear.—The notice to appear should be directed to the defendant by name, "to the within defendant" is not sufficient.—Brown *vs.* Whitehead. Michs. 1 Vic.

Service.—Sheriff's Officer.—Service of process by a person, not being a sheriff's officer, was set aside for irregularity with costs.—Landrigan *vs.* Callaher. Michs. 1 Vic.

Service.—Where at the time of the service of process, inspection of the original was demanded and refused, the service was set aside with costs. — Miller *vs.* Wallace et al. Michs. 1 Vic.

Indorsement—alias Writ.—It is not necessary to indorse an alias bailable writ, issued under the statute, with a notice of the plaintiff's claim; and where the defendant puts in special bail to such a writ, he is not thereby prevented from objecting to any irregularity in the arrest.—Ross et al. *vs.* Balfour et al. Michs. 2 Vic.

Notice to Appear.—Since the passing of the statute, altering the style of the Court, notice to appear in the "King's Bench" instead of the "Queen's Bench" is irregular.—Ellerbeck *vs.* Sherwood. Michs. 3 Vic.

Service.—Boundaries.—In moving to set aside the service of process, because served in the wrong District, the affidavit on which the motion is made, must state that the service was not on the confines, or that there was no dispute about boundaries. — Crysler *vs.* Thompson. Michs. 3 Vic.

PROFERT.

See also BOND.

Where a sealed instrument was pleaded with a profert and produced at the trial, and subsequently in term, but was afterwards mislaid, and on a second trial the defendant agreed to admit the execution, knowing that it had been mislaid, and secondary evidence was gone into, the defendant objecting to *that* secondary evidence, but not to *any* secondary evidence, the Court refused to allow a non-suit to be entered for the non-production of the instrument.—Rowand *vs.* Tyler. Trinity, 5 and 6 Will. IV.

The admission of the execution of a bond under a judge's order, does not dispense with the necessity for its production, where it is pleaded with a profert.—Lesslie *vs.* Leahy. Hil. 7 Will. IV.

PROMISSORY NOTE.

Presentment.—In an action on a promissory made payable at a particular place, the declaration must aver a presentment there, when the note became due.—Ferrie *vs.* Rykman. Hil. 10 Geo. IV.

Consideration.—Failure of.—It was held in an action on a promissory note given by the defendant for the difference of price, on an exchange of horses between him and the plaintiff, that it was no defence, that the horse received from the plaintiff was unsound, the plaintiff having immediately after the exchange sold the horse received by him, and the defendant never having offered to return the plaintiff's horse.—Hall *vs.* Coleman. Hil. 3 Will. IV.

Witness.—A maker of a joint and several promissory note is not a competent witness for a co-maker.—Dudley *vs.* Morse. Hil. 3 Will. IV.

Limitations.—Statute of—Where to an action on a promissory note payable to bearer, the defendant pleaded actio non accrevit, and the plaintiff replied, he was in foreign parts when the action accrued, and issue was joined thereon. Held that on proof that the plaintiff received the note in this Province, the verdict should have been for the defendant, and the Jury having found for the plaintiff, a new trial was granted without costs.—Shaw *vs.* Mathison. Hil. 3 Will. IV.

Payment.—Where a note against a Judge of a District Court was placed in the hands of an Attorney for collection, and the Attorney agreed to give the Judge credit on the note, for the fees payable by him for business done in the Court, and did indorse a part on the note as payment, and subsequently the whole amount was paid by fees, but the Attorney refused to credit more than the sum first endorsed, and afterwards absconded. Held in an action on the note against the Judge, that he could not give the credits by fees, in evidence as payment on the note.—Ketchum *vs.* Powell. Easter, 3 Will. IV.

Agent.—A general power of attorney to an agent to *sign* bills, notes, &c. and to superintend, manage, and direct all the business of the principal, gives him the power to *endorse*, and an indorsement to pay the trustees of an insolvent firm, without naming them, is sufficiently certain, on shewing who they are, and that they act in that capacity, to vest the note in them, so as to give their indorsee a right to sue upon it.—Auldjo *vs.* McDonell. Easter, 3 Will. IV.

Presentment.—Proof of presentment of a promissory note payable at a particular place, was held to be unnecessary, where the defendant, an absconding debtor, on the day the note became due wrote to the plaintiff requesting time to pay it.—McDonell et al. *vs.* Lowry, Michs. 4 Will. IV.

Condition.—In an action on a promissory note indorsed to the plaintiff by the payee after it became due. Held that the defendant might go into evidence to shew that the note was drawn on certain conditions, all of which the payee had not complied with, in order to shew fraud and misrepresentation on the part of the payee.—McCollum *vs.* Church. Hil. 4 Will. IV.

Alteration.—Where a note originally joint, was altered to joint and several without the consent of one of the makers, who was afterwards sued alone upon the note by an indorser. Held that the plaintiff could not recover on the note on account of the alteration, nor on the money counts, as there was no privity between the maker and him.—Samson *vs.* Yager. Michs. 5 Will. IV.

Consideration.—Failure of—It is no defence to an action on a promissory note, that it was given on a consideration that did not prove so beneficial as it was represented.—Dalton *vs.* Lake. Michs. 5 Will. IV.

Notice of Dishonor.—Where in an action against an indorser of a promissory note, no notice of dishonor was proved, but it was sworn that the defendant had asked for time and promised to pay, although he said at the same time that he had received no notice, and the Jury found for the defendant, the Court refused to disturb the verdict.—Bank U. C. *vs.* Corby. Michs. 5 Will. IV.

Condition.—Where the defendant purchased personal property from the plaintiff, and gave him back a mortgage on it to secure the purchase money, and agreed if default were made in the payment, he would give up the property and the plaintiff should sell it to pay himself, and give the overplus, if any, to the defendant, and at the same time the defendant gave the plaintiff his promissory notes for the purchase money, which were not to be acted on, if the property were given up; on default having been made, the property was given up and sold by the plaintiff, for less than the mortgage money, and an action was then brought on one of the promisso-

ry notes to recover the difference. Held that it would not lie, the notes having been satisfied by the surrender of the property according to the agreement.—Smith *vs.* Judson. Hil. 5 Will. IV.

Partner.—A promissory note given by a partner in the name of the firm, for a private debt of his own, is not binding on the firm.—Beals *vs.* Sheldon et al. Trinity, 5 and 6 Will. IV.

Consideration.—Failure of—Part failure of consideration, is no defence to an action on a promissory note.—Dixon *vs.* Paul et al. Michs. 6 Will. IV.

Presentment.—A promissory note made payable at a particular place must be presented there the day it falls due, or the holder cannot recover.—Truscott et al. *vs.* Lagourge. Easter, 6 Will. IV.

Partner.—A. and B. representing themselves as partners, obtained C.'s accommodation indorsement to a note drawn by A. alone, but stated by B. to be drawn for their joint benefit and on their joint liability; the note was discounted by A. and C. was subsequently obliged to pay it, A. having absconded. Held that C. could not recover against B. on the note, but that he might on the count for money paid.—Annis et al. *vs.* Lewis. Trinity, 6 and 7 Will. IV.

Bearer. — Indorsement. — An action may be maintained against the indorser of a promissory note made payable to bearer.—Scott et al. *vs.* Douglass. Trinity, 6 and 7 Will. IV.

Loss.—Where a promissory note had been enclosed to an attorney's clerk in the course of business and mislaid. Held that secondary evidence of it could not be given without calling the clerk, although the attorney was called, and swore to his belief of its loss.—Groves *vs.* Clarke et al. Trinity, 6 and 7 Will. IV.

Accommodation Indorsement. — A second accommodation indorser who has paid a promissory note discounted at a bank for the benefit of the maker, may maintain an action on the note against a prior accommodation indorser, and may indorse it over after it is due.—Breeze *vs.* Baldwin. Hil. 7 Will. IV.

Bearer.—Declaration. — In a declaration by the holder of a promissory note payable to bearer, it is not necessary to aver that the note was "assigned over," and delivered to the plaintiff.—Duggan *vs.* Borland. Hil. 7 Will. IV.

Consideration.—Failure of—Where A. being seized in fee of lands made jointly with B. a lease of these lands to C. taking promissory notes from C. for the amount of the rent, payable as the rent would become due; the day after the execution of the lease, A. died intestate, and then B. died, and his Executors sued C. on the notes. Held that the action could not be maintained, the consideration on which they had been given, having failed.—Merwin et al. *vs.* Gates. Easter, 7 Will. IV.

Renewal.—The indorser of a promissory note, which had been intended as the renewal of another note, but not having been so used had been left in the maker's hands with the indorsers' names upon it, and was received by the plaintiff from the maker before it became due, for a valuable consideration, was held liable on the note.—Larkin *vs.* Wiard. Trinity, 1 and 2 Vic.

Presentment. — Christmas Day. — A promissory note which falls due on a Christmas day, being a Monday, must be presented for payment on the preceding Saturday.—Wells *vs.* Wall. Trinity, 1 and 2 Vic.

Copies. — Annexation of—Where the holder of a promissory note proceeds under 5 Will. IV., ch. 1, he must prove at the trial that copies of the note were annexed to the declarations filed and served.—Malloch *vs.* Norton. Michs. 2 Vic.

Foreign.—A promissory note made and indorsed in a foreign country is negotiable here within the Statute of Anne.—Thompson *vs.* Sloan. Michs. 2 Vic.

Particulars.—Where a promissory note or bill of exchange is declared on, it is not necessary to mention it in a bill of particulars.—Street *vs.* Cameron. Michs. 3 Vic.

Notice of Dishonor.—It is sufficient if the indorser of a promissory note receive

notice of its dishonor in the same time as he would have received it by post, although the notice was sent to him by private hand and might have been delivered a day sooner.—Nassau *vs.* O'Reilly. Hil. 2 Vic.

Defence.—Forgery.—In an action by the last indorsee against the last indorser of a promissory note, it is no defence that the names of the maker and of the prior indorsers are forged.—Eastwood et al. *vs.* Wesley. Michs. 2 Vic.

Affidavit of Debt. — An affidavit to hold to bail on a promissory note must shew the amount for which the note was drawn.—Norton *vs.* Latham. Michs. 3 Vic.

Bearer. — Indorsement. — Where A. made a promissory note payable to B. or bearer, and C. indorsed it as a surety to B without B.'s indorsement. Held that B. could not recover on the note against C. as a maker or on any other ground.—Thew *vs.* Adams. Hil. 3 Vic.

Particulars. — Where a promissory note is declared on, an error in its date given in a bill of particulars under a Judge's order, is immaterial.—Barney *vs.* Simpson. Hil. 3 Vic.

Presentment. — Where a promissory note is made payable at a particular place, presentment there is necessary, although the maker had no funds there, but as between the payee and the maker presentment there at any time before action brought will be sufficient, if there were no funds at the day. — Henry et al. *vs.* McDonell. Hil. 3 Vic.

QUARTER SESSIONS.

Justices in Quarter Sessions cannot decline confirming the unopposed report of a Surveyor of Highways, recommending the alteration or opening a new road, on the ground that the proposed road has been finally rejected by the verdict of a jury on a former occasion, if upon inspection, the alteration and line of road rejected by the jury and the object of the pending proceeding, do not seem to be identical.—Rex *vs.* Justices Home District. Trinity, 11 Geo. IV.

Upon a Mandamus nisi to Justices of the Peace in Sessions, they should return the recorded proceedings had before them, and not collateral matters not embraced in the entries of the Court.—*Ib.*

Justices of the Peace in Sessions cannot apply the District funds to building a new gaol and court house, without an act of Parliament specially conferring that authority.—Rex *vs.* Justices Newcastle District. Trinity, 11 Geo. IV.

Where a person had been convicted before Justices of the Peace, and fined, and on appeal to the Quarter Sessions, the Justices there admitted more evidence than had been heard on the conviction, and the accused party was acquitted, but on receiving the opinion of the Attorney General that the additional evidence should not have been admitted, they confirmed the conviction and ordered it to be recorded but took no notice of the acquittal, the Court made absolute a rule for a mandamus commanding them to enter the acquittal. — Rex *vs.* Justices of Bathurst. Michs. 6 Will. IV.

On an appeal to the Quarter Sessions under 4 Will. IV., ch. 4, evidence may be received which was not offered to the convicting Justices.—*Ib.* Hil. 6 Will. IV.

RECORD.

See also EVIDENCE.—PRACTICE.

Every roll and record filed and docketed in the proper office, will be presumed correct until the contrary be shewn, although it may appear that the entries were not examined with the original papers by the officer at the time of filing and docketting.—Prentice *vs.* Hamilton. Easter 1 Will. IV.

REGISTRY ACT.

See also DEED.

A sale of growing timber is within the Registry Act; and where A., by deed, sold growing timber to B., and afterwards conveyed the land on which it was growing to C., without any reservation, and C. registered his deed first. Held, that C.'s deed must prevail, and that B. could not maintain an action against him for cutting the timber, although C. had notice of B.'s deed, before the registry of his own.—Ellis *vs.* Grubb. Michs. 5 Will. IV.

It is not necessary, in the memorial of

a mortgage, to notice the proviso for redemption; and an action cannot be brought against a register for treble damages, under the tenth section of the Registry Act, 35 Geo. III. ch. 5, until he has been convicted, under that section, of some offence for which he shall forfeit his office.—Hamilton *vs.* Lyons. Easter, 7 Will. IV.

Infancy is not an inevitable difficulty, within the fifteenth section of the Registry Act, so as to preclude the necessity of an infant devisee, registering the Will within six months from the death of the devisor, so as to avoid a conveyance by the heir at law.—McLeod *vs.* Truax. Hil. 7 Will. IV.

The certificate of registry indorsed on a deed, is conclusive of the registry, and cannot be impeached by evidence that it has been irregularly done.—Doe Russell *vs.* Gillett. Michs. 3 Vic.

RELEASE.

See also EVIDENCE.—PLEADING.

A lessor in ejectment will not be allowed to release the action.—Doe Boyer *vs.* Claus. Easter, 3 Will. IV.

A release by an executor, who is also a trustee under the Will, does not divest him of his estate as trustee.—Doe Berringer *vs.* Hiscott. Michs. 3 Vic.

Where, in an action of covenant to a plea of release, the plaintiff replied, that it was procured by fraud and covin, on which issue was joined, and at the trial it appeared, that before any breach of the covenant, the plaintiff had assigned his interest in the subject matter to a third party, and that this action was brought for the benefit of such third party, whom the plaintiff and defendant had *combined* by the release to defraud. Held, that, under the pleadings, such evidence was inadmissible, as the Court could not travel out of the record, and the party interested should have applied to set the release aside.—Rowand *vs.* Tyler Easter, 1 Will. IV.

Where a chose in action has been assigned, and an action is brought for the benefit of the assignee, in the name of the assignor, the assignor will not be allowed fraudulently to give a release, and where a release from him, which has been obtained by fraud as against the assignee, is pleaded, the Court will set the plea aside, and order that the release shall not be made use of at the trial.—*Ib.* Michs. 5 Will. IV.

A plea of release, puis darrein continuance, will not be set aside, so as to allow the attorney to proceed for his costs against the defendant, unless a clear case of collusion to defraud him be made out.—White *vs.* Boulton. Easter, 2 Vic.

RELIGIOUS SOCIETY.

Where real property was given by deed in trust for the use of the Methodist Episcopal Church in Canada, according to the rules adopted by the general or annual Conference, and that when any of the trustees or their successors should cease to be a member of that church, that such trustee should vacate his trusteeship; and at a general conference, the majority did away with Episcopacy, and having appointed new trustees, claimed the property from the old trustees, who adhered to the Episcopacy, on the ground that by not conforming to the rules of the general Conference, they had ceased to be trustees, according to the terms of the trust deed, and the new trustees took possession of the property. Held, on ejectment brought by the old trustees, that they were entitled to recover, the Conference having no power to do away with Episcopacy, and the old trustees, by continuing in the original church, having complied with the terms of the deed.—Doe Trustees Methodist Episcopal Church *vs.* Bell. Hil. 7 Will. IV.

Trespass was held to be maintainable by the trustees of a Methodist chapel against a person who was a trustee, but having ceased to be a member of the society, could not hold the trust under the provisions of the deed which created it, and some of the plaintiffs, who were not the original trustees, but had been elected as their successors under the same provisions, were properly joined in the action.

Everett et al. *vs.* Howell et al. Michs. 1 Vic.

An ejectment cannot be maintained on a demise of the trustees of a Methodist Church, as a corporate body, the demise must be in their names as individuals.—Doe Methodist Trustees *vs.* Carwin. Trinity, 1 & 2 Vic.

RENT,—See DISTRESS.—LEASE.

REPLEVIN.

A writ of replevin with the justicies clause, is irregular.—Cornell *vs.* Quick. Easter, 1 Will. IV.

In replevin under the plea of non-tenuit to an avowry for rent in arrear, the plaintiff may shew an eviction.—Cormack *vs.* Bergin. Trinity, 7 Will. IV.

Personal service of the summons in replevin is not necessary, and after the goods have been replevied, if the defendant do not appear, the plaintiff may proceed by notice under 5 Will. ch. 7, sec. 6, and he must declare, as in other cases, within a year after the return of the writ, or he will be out of court.—Zavitz *vs.* Hoover et al. Michs. 1 Vic.

REPLEVIN BOND.

The Court will not determine summarily whether a replevin bond has been forfeited or not.—Hoover et al. *vs.* Zavitz. Trinity, 1 and 2 Vic.

REQUESTS.—COURT OF

A mandamus was granted against the Clerk of a Court of Requests to deliver up the books and papers of the Court, which he had refused to do on being removed from office.—In re Lacroix. Michs. 6 Will. IV.

Where a verdict was taken subject to a reference, and the arbitrators awarded £10, reducing only the price, and not the items of the account, a suggestion to deprive the plaintiff of costs, under the Court of Requests Act, was refused.—Stratford *vs.* Sherwood. Trinity, 6 and 7 Will. IV.

In trespass against the Commissioners of a Court of Requests, a replication to a plea justifying under the Court of Requests act, that the plaintiff was not duly summoned to appear at the Court at which judgment was given, was held bad on demurrer.—Stevens *vs.* Cowan et al. Trinity, 7 Will. IV.

An action on the case was held to be maintainable against a bailiff to a Court of Requests, for falsely swearing to the service of a summons which had not been served, whereby judgment was given against the plaintiff, and the common law remedy is not taken away by the action given against the bailiff on his covenant under the Court of Requests Act.—Cline *vs.* McDonald. Easter, 2 Vic.

Where the amount of an account originally beyond the jurisdiction of the District Court, is reduced to an amount within the jurisdiction of the Court of Requests, by payments before action brought, a suggestion to deprive the plaintiff of full costs under the Court of Requests Act will be refused.—Scott *vs.* Fergusson. Scott *vs.* Rooke. Michs. 3 Vic.

RIDEAU CANAL.

If a defendant rests his defence on his acting under the statute for constructing the Rideau Canal, he should be prepared to prove that the act he justifies was regularly done under that statute, and not rely merely on his being employed in the construction of the canal.—Phillipps *vs.* Redpath. Hil. 10 Geo. IV.

A contractor or workman, quarrying stone in the land of a third party under the Rideau canal act, gains no property in the stone, which, immediately on being quarried, vests in the owner, and consequently an assignment of such stone by the contractor or workman is void.—Mittleberger *vs.* By. Hil. 2 Will. IV.

Trover lies against a lock keeper on the Rideau canal for not delivering up lumber seized and detained by him under the provisions of the Rideau canal Act for obstructing the navigation, on a tender of the charges occasioned by such seizure, and the removal of the obstruction.—Gould *vs.* Jones. Hil. 2 Will. IV.

SATISFACTION.

A. being in execution at the suit of B. recovered against B. a verdict for a smaller sum. Held, that proceedings in A.'s action against B. should be stayed, on B. acknowledging satisfaction on his judgment for the amount of A.'s verdict against him.—Bethune *vs.* Brown. Michs. 7 Will. IV.

SEDUCTION.

Case for seduction will lie for damages arising from loss of service by a subsequent connexion, although there be strong evidence to prove that the defendant, in ac-

complishing his purpose [illegible], had been guilty of a rape [illegible]. Michs. 4 Will. IV.

The Court refused a new trial in case for seduction, where the jury had found for the defendant, on evidence clearly impeaching the character of the seduced, although affidavits were produced on the motion, that if the plaintiff had a new trial he would rebut such evidence, and that he would have been prepared to have done so at the former trial had he had notice.—Monk *vs.* Capelman. Michs. 6 Will. IV.

SET OFF.

Where after declaration filed, and pleas of general issue and set off pleaded, the plaintiff agreed with the defendant, that if the defendant would pay a demand on a note in favor of a third party against the plaintiff, the plaintiff would allow it in the action against the defendant, and the defendant did pay it, and such payment with the other items of set off, overbalanced the plaintiff's account. Held, that the settlement of the demand against the plaintiff by the defendant was a payment, and could not be treated as a set off, having been made after action brought, and, that as without it the plaintiff's claim was the larger, he was entitled to a verdict, with nominal damages.—Sherwood *vs.* Campbell. Hil. 6 Will. IV.

A. being in execution at the suit of B., recovered against B. a verdict for a smaller sum. Held that proceedings in A.'s action against B. should be stayed, on B.'s acknowledging satisfaction on his judgment for the amount of A.'s verdict against him.—Bethune *vs.* Brown. Michs. 7 Will. IV.

A notice of set off cannot be given before the plea of the general issue is filed.—Bickerstaff *vs.* Merchant. Hil. 2 Vic.

A Judgment, obtained by a principal, cannot be set off against a judgment obtained by his debtor against one of his sureties.—Gray *vs.* Smith. Hil. 2 Vic.

A plaintiff cannot by declaring specially, where he could recover under the money counts alone, deprive the defendant of his right of set off.—Miller *vs.* Munro. Michs. 3 Vic.

SHERIFF.

Trespass.—Deputy.—In trespass against a Sheriff for seizing and taking goods it is sufficient to prove that the Deputy Sheriff seized them colore officii, without proving the writ of execution, or giving evidence of his being Deputy Sheriff, otherwise than by general reputation.—Holt *vs.* Jarvis. Trinity, 11 Geo. IV.

Money had and received.—Demand.—In an action against a Sheriff for the overplus of money levied under an execution, the plaintiff must prove a demand of the money before action brought.—Ruggles *vs.* Beikie. Michs. 1 Will. IV. Trinity, 3 and 4 Will. IV.

Rule to Return Writ.—A rule to return a writ of Fieri Facias cannot issue from the office of a Deputy Clerk of the Crown in an outer District.—Anon. Michs. 1 Will. IV.

Mandamus.—Taxes.—Where lands were sold under the assessment law, for non-payment of taxes, on the 1st March, 1830, and on the 1st March, 1831, the owner of the land paid the amount of the purchase money, and twenty per cent. besides, as required by the statute, to the Deputy Sheriff, who collected taxes for the Treasurer of the District who was then absent, and a short time afterwards the purchaser at the sale, demanded a deed of the land from the Sheriff, who refused to give it, the Court refused a mandamus to compel him, stating, that the owner was in time, and if he were not, they would not interfere summarily, but would leave the purchaser to his action.—In re Sheriff Newcastle District. Easter, 1 Will. IV.

Attachment.—Where a Sheriff after having returned cepi corpus to a writ of capias ad respondendum, had been ruled to bring in the body, and attached for not obeying the rule, and the attachment was afterwards set aside for irregularity, but while it was in existence, the defendant's action had been discharged by supersedeas, bail above having been put in and allowed, but the rule of allowance was not served. Held, that a second attachment against the Sheriff, on a second rule to bring in the body, issued eight months after the setting aside of the first

attachment and the debtor's discharge, was irregular, and the Court ordered it to be set aside.—Rex *vs.* Sheriff Niagara District. Trinity, 1 and 2 Will. IV.

Bond to the Limits.—To debt on a bond to the limits by the Sheriff's assignee, it is a good plea, that after breach and before the assignment to the Plaintiff, the Sheriff delivered up the bond to the debtor to be cancelled, but it is no answer that the debtor was surrendered after breach, if the bond were not cancelled.—Lemesurier *vs.* Smith. Easter, 2 Will. IV.

Deed.—Ejectment.—In ejectment by a purchaser of lands sold under an execution the Sheriff's deed is prima facie evidence that the writ was delivered to the Sheriff and the lands seized and sold under it.—Doe Spafford *vs.* Brown et al. Easter, 3 Will. IV.

False Return.—Where a writ of Fieri Facias was placed in a Sheriff's hands against the goods of a defendant, who was in possession of personal property in his District at the time, and a levy was made but the plaintiff afterwards compromised with the defendant, receiving payment of his debt by instalments but giving no directions to the Sheriff to discharge the defendant's property. Held that on a return of nulla bona by the Sheriff, several months afterwards, when the defendant had absconded without satisfying the balance of the debt, the plaintiff could not sue for a false return, as he was precluded by the arrangement which he had made with the defendant. — Everrarghim *vs.* Leonard. Easter, 3 Will. IV.

False Imprisonment.—Where a debtor on the limits on a writ of capias ad satisfaciendum, issued out of a District Court, was brought by his bail for surrender to the Sheriff, who refused to receive him except at the Gaol, but gave a certificate which was taken away by the bail, that the gaoler might receive him, and the bail did not then surrender him, but some time after, (the debtor in the mean time having gone off the limits) gave him up to the Sheriff, who kept him in close custody, until he was discharged by an order of the Judge of the District Court. Held, that an action for false imprisonment would not lie against the Sheriff, for taking the debtor on the second surrender, the first having been conditional and the condition not complied with, and the escape having been negligent, and not voluntary.—Thomson *vs.* Leonard. Easter, 6 Will. IV.

Attachment.—Bail being perfected, the Court will not order an attachment obtained against a Sheriff for not bringing in the body to stand as a security, where although a trial has been lost, it has been without the default of the Sheriff, and he swears the application is made for his own indemnity.—Ward *vs.* Skinner. Trinity, 3 and 4 Will. IV.

Poundage.—Quære, is a Sheriff entitled to poundage, on a fieri facias against lands, where after advertisement for sale, the parties compromise.—Gates et al. *vs.* Crooks. Michs. 4 Will. IV.

Attachment.—Where a sheriff returned a writ to the Clerk of the Crown after a rule to return it had expired, and on an attachment being moved for not returning it, it was produced by the Clerk of the Crown but had not been filed, the Court refused to grant the attachment merely for the purpose of compelling the Sheriff to pay the costs.—Andrews *vs.* Robertson et al. Michs. 7 Will. IV.

Attachment. — Where a Sheriff had been ruled to return a writ of capias ad respondendum, and after the expiration of the rule returned the writ to the plaintiff's Attorney, and afterwards an attachment issued against the Sheriff, the Court relieved him on payment of costs up to the time of the return although a trial had been lost, but not through his default.—Rex *vs.* Sherwood. Michs. 4 Will. IV.

Money had and recieved.—Assumpsit for money had and received may be maintained against a Sheriff for money made on a writ of Fieri Facias, and his duty is to pay the money over to the party entitled, and not to return it with the writ into the hands of the Clerk of the Crown.—Shuter et al. *vs.* Leonard. Hil. 4 Will. IV.

Deed.—Taxes. — In a declaration in case against a Sheriff for not conveying

lands sold under the assessment law, an averment that the sale took place on 22d July, 1830, and that "afterwards and at the expiration of twelve calendar months, from the time of such sale, to wit on 22d July, 1831, the plaintiff demanded a deed", was held sufficient on general demurrer, held also that it was unnecessary to aver that there was no sufficient distress on the lands, or that a deed was tendered to the Sheriff for execution.—Spafford *vs.* Sherwood. Easter, 4 Will. IV.

Trespass. — Absconding Debtor. — In trespass against a Sheriff for seizing the goods of the plaintiff under an attachment issued under the absconding debtors' act against the goods of a third party, by whom they had been sold to the plaintiff before the attachment, the defence was that the sale was fraudulent and void against creditors under 13 Eliz. ch. 5, but the Sheriff did not prove that any debt had been due from the absconding debtor to the attachment creditor. Held that without the proof of this, his justification was incomplete, and that the plaintiff would be entitled to recover.—Grant *vs.* McLean. Easter, 4 Will. IV.

Rule to return Writ.—An attachment against a Sheriff for not returning a writ of Fieri Facias was refused, where more than a year had elapsed since the rule to return it had been issued. — Loucks *vs.* Farrard. Michs. 3 Will. IV.

Trespass. — Absconding Debtor. — Where in trespass against a Sheriff for seizing the plaintiff's goods, the defence was that they were the goods of a third party, and had been seized as such under an attachment issued against him as an absconding debtor, but had been delivered up at the time of seizure on the plaintiffs entering into a bond for their production when required, and afterwards they were sold at the suit of the attaching creditor on a writ of Fieri Facias, the plaintiffs having given them up according to the terms of their bond, and the plaintiffs now claimed them as their own property under an assignment from the absconding debtor prior to the attachment, which the defendant contended was fraudulent and void as against creditors, but proved no debt due to the attachment creditor, nor did he shew the judgment, nor execution, relying on the bond, as estopping the plaintiffs from disputing those facts, and the jury under the direction of the Judge found for the plaintiffs, the Court although agreeing in the direction of the Judge that the judgment and writ of execution should have been shewn, yet from the circumstances of the case, and on affidavits filed showing that the damages were excessive, granted a new trial on payment of costs.—Powers et al. *vs.* Rutton. Hil. 5 Will. IV.

Trover. — Where property had been seized in execution by a Sheriff, and afterwards abandoned by the direction of the plaintiff's Attorney, and a memorandum of the suit being discharged given to the defendant, but the Sheriff was afterwards directed to proceed, and sold to the plaintiff in this action, (the property in the mean time having been sold bona fide by the defendant to a third party, who had left it in the possession of the defendant in this action.) Held that no property passed to the plaintiff by the Sheriff's sale, as the levy had been abandoned, and a bona fide sale afterwards made by the defendant against whom the Sheriff had the execution. — Gould *vs.* White. Hil. 5 Will. IV.

Escape.—In an action of case against a Sheriff for not arresting a debtor, and an averment in the declaration of the issuing of an *alias* writ of capias ad respondendum, to support which an *original* writ of capias was produced at the trial, the variance was held immaterial. — Wood *vs.* Sherwood. Hil. 5 Will. IV.

Trespass.—Absconding Debtor.—Where A. being indebted to B. and C., and being insolvent was about to leave the country, but desired to secure to B. the debt he owed him, and instructed his clerk to that effect, who after A.'s departure, made an assignment of his goods to B., without B.'s knowledge or consent, and before B.'s assent was received, the goods were seized by a Sheriff under an attachment issued at the suit of C. Held that the sale to B. was not complete until his assent was receiv-

ed, and that the Sheriff, having seized the goods before such assent, could not be treated as a trespasser.—Barrett *vs.* Rapelje. Easter, 5 Will. IV.

Trespass.—Fraudulent Assignment.—A Sheriff who has wrongfully seized property in execution cannot call in question the right of the party from whose possession the property was taken by him, as that it was received under an assignment fraudulent as against creditors, from the execution debtor.—Cook *vs.* Jarvis. Trinity, 5 and 6 Will. IV.

Poundage.—A Sheriff is not entitled to poundage on a Fieri Facias against lands, where after the writ is delivered to him, and before any thing is done under it, the plaintiff and defendant compromise.—Leeming et al. *vs.* Hagerman. Hil. 6 Will. IV.

Trespass.—Bailiff.—In trespass against a Sheriff for seizing property in execution, it is not sufficient to call the bailiff, who made the seizure, his warrant must be produced, or its non-production accounted for.—Lewis *vs.* Jarvis. Easter, 6 Will. IV.

Attachment.—A second attachment against a Sheriff for not bringing in the body after rule on a return of cepi corpus, was refused, until the costs of setting aside a former one for irregularity were paid.—Rex *vs.* Ruttan. Easter, 6 Will. IV.

Attachment.—Where an attachment was obtained against a Sheriff for not returning a writ, after a settlement of the plaintiff's claim before the rule issued, the attachment was set aside but without costs, as the Sheriff should have come in and applied to set aside the rule.—Pelton *vs.* Administrator of Wells. Hil. 7 Will. IV.

New Sheriff.—On the death of a Sheriff, his Deputy is charged with the execution of his office until a new Sheriff is appointed, and he must assign over by indenture, as well the debtors on the limits, as those in custody, and the new Sheriff is not liable for the escape of a debtor on the limits at the time of his appointment without such assignment.—McPherson et al. *vs.* Hamilton. Easter, 7 Will. IV.

Return.—It is not improper for a Sheriff to return on a writ of Fieri Facias, that he has made the money *and paid it over to the Plaintiff's Attorney*, the words in italics being mere surplusage.—Doyle *vs.* Bergin. Trinity, 7 Will. IV.

Member of Assembly.—An attachment was granted against a Sheriff, who was a member of Parliament, for not returning a writ pursuant to a rule of Court.—Bell *vs.* Buchanan. Michs. 1 Vic.

Escape.—An action for an escape should be brought against the Sheriff, and not against the bailiff who arrested, unless the bailiff has been guilty of a rescue.—Wilson *vs.* M'Cullagh. Michs. 2 Vic.

Sale under Execution.—A Sheriff cannot in any manner become the purchaser of property sold under an execution.—Doe Thomson *vs.* McKenzie. Michs. 2 Vic.

Covenant. — Sureties.—In covenant against a Sheriff and his sureties for default in the Sheriff in not paying over money levied under a writ of Fieri Facias against lands, the judgment on which the Fieri Facias issued must be set out in the declaration, but it is not necessary to recite a previous writ of Fieri Facias against goods.—Bidwell *vs.* McLean. Michs. 2 Vic.

Rule to Return Writ.—A party who has ruled a Sheriff to return a writ and afterwards given an order to stay proceedings for a certain time, cannot after the expiration of that time, the writ not having been returned, proceed by attachment under that rule.—Bergin *vs.* Hamilton. Michs. 2 Vic.

Return.—An insufficient return is as no return, and the course is to move for an attachment, not to quash the return.—Eastwood et al. *vs.* McKenzie. Hil. 2 Vic. Regina *vs.* McLeod. Michs. 3 Vic.

Poundage.—A Sheriff is entitled to poundage only on going to make a levy, not on going to sell also.—Burwell *vs.* Tomlinson. Hil. 2 Vic.

Attachment.—Venditioni Exponas.—An attachment may issue against a Sheriff for returning "goods on hands" to a writ of venditioni exponas.—Harper *vs.* Powell. Easter, 2 Vic.

Attachment.—Costs.—A Sheriff cannot be attached for non-payment of the costs of a rule to return a writ under 3 Will. IV. ch. 9, unless there has been a rule specially calling on him so to do.—Marcy *vs.* Butler. Hil. 2 Vic. Doe McGregor *vs.* Grant. Trinity, 2 and 3 Vic.

Sheriff.—Sureties.—In a joint action against a Sheriff and one of his sureties under 3 Will. IV. ch. 9, pleas in abatement by the Sheriff and the surety, that there is a separate action pending against each for the same cause, &c. were held good on demurrer as to the surety, and judgment consequently given for both of the defendants.—Com. Bank *vs.* Jarvis et al. Michs. 3 Vic.

Attachment.—An attachment will not be granted against a Sheriff for not returning a writ, pursuant to a rule to return it, issued on the same day the writ was returnable.—Regina *vs.* Hamilton. Easter, 2 Vic.

Attachment.—Ven. Ex.—A Sheriff under a writ of venditioni exponas has no right to enter upon the defendant's lands, and sell his goods there by Public Auction, and a purchaser who enters at the same time as the Sheriff is a trespasser as well as the Sheriff.—McMartin *vs.* McPherson Michs. 3 Vic.

Escape.—A Sheriff may bring an action against bail to the limits for the escape of the debtor, before he has been sued or has paid the money for which the debtor was in execution.—Ruttan *vs.* Wilson. et al. Michs. 3 Vic.

Sale.—The Court will, after a sale of lands under an execution, prevent an assignment by the Sheriff to the purchaser, where good cause is shown for requiring their interference.—Bank U. C. *vs.* Miller. Hil. 3 Vic.

Attachment.—It is a good ground to prevent the summary interference of the Court by attachment against a Sheriff for not paying over money, that the money has been attached in the hands of the party not paying over, under the absconding debtors' act.—Powers *vs.* Scott. Hil. 3 Vic.

Justices.—After a Sheriff's death, his personal representatives cannot be joined with his sureties, in an action on the covenant given by the sureties and the Sheriff under 8 Will. IV. ch. 9, for a default by the Sheriff in his life time.—Boulton *vs.* Hamilton. Hil. 3 Vic.

SIDE LINES.

The statute of limitations applies to lands occupied by parties after having run side lines, although it appear on a new survey that the original side lines were run erroneously.—Dennison *vs.* Chew. Trinity, 6 and 7 Will. IV.

SLANDER.

See also LIBEL.

Damages.—In an action on the case for slander, a new trial will not be granted at the instance of the plaintiff on account of the smallness of the damages.—Atkins *vs.* Thornton. Michs. 1 Will. IV. Proctor *vs.* Allen. Trinity, 2 and 3 Vic.

Privileged Communication.—A charge of stealing office monies, made by a clerk in a public office to the head of the department against another clerk, was held not to be a privileged communication, in the absence of any proof of the loss of such monies, or of the grounds of the accusation, although the principal, to whom the accusation was made, stated that he believed the defendant imagined the charge to be true.—Prentice *vs.* Hamilton. Easter, 1 Will. IV.

Crime.—An action will lie for words spoken in this Province of a person, imputing to him the commission, in a colony subject to British criminal law, of a crime punishable by that law.—Malloch *vs.* Graham. Hil. 2 Will. IV.

Damages.—In an action of slander for accusing the plaintiff of theft, and a verdict for £150, a new trial was refused on the ground of excessive damages, and although it was sworn that the principal witness for the plaintiff had since been convicted and banished for forgery.—Eakins *vs.* Evans. Hil. 2 Will. IV.

Evidence.—Where in case for the slander of the plaintiff's steamboat, it was averred in the declaration that certain persons were going on a voyage in the steamboat, and that the slanderous words were spoken in the hearing of a particular person

named and others, but no proof was given of the voyage, nor of the persons who were going on it, nor of the individuals in whose hearing the words were stated to have been spoken, and the jury found for the plaintiff, the Court held that the evidence did not support the declaration, and a new trial was granted without costs.—Hamilton *vs.* Waters. Michs. 5 Will. IV.

Privileged Communication.—In case for slander, the defendant may under the general issue shew that the words spoken were used in a privileged communication, and where the words imputed slanderous are spoken on an occasion when either from public duty, private interest or the relation of the parties to each other, the character of the party complaining may be freely discussed, the jury must find express malice upon evidence sufficient to warrant their finding, before the defendant can be pronounced guilty.—Richards *vs.* Boulton. Hil. 5 Will. IV.

Costs.—Where the Jury found for the plaintiff in an action of slander, one shilling damages and full costs of suit, full costs were allowed.—Skinner *vs.* Nevin. Michs. 7 Will. IV.

Evidence.—Words stated in the declaration as if narrated by the defendant in the third person, are not supported by proof of words spoken by him in the first person. —Phillips *vs.* Odell. Hil. 7 Will. IV.

Crime.—Evidence.—An action cannot be supported for words spoken imputing the crime of arson to the plaintiff, where from the evidence it appears, that the burning of the building of which the plaintiff was accused, would not have constituted such crime, and semble, under the general issue, where the words are proved, the inference of malice may be repelled.—McNab *vs.* Magrath. Trinity, 7 Will. IV.

Evidence.—Where in case for slander, the words laid were, "you robbed the mail," and the words proved, "I never robbed the mail like you," held a fatal variance.—Williams *vs.* McBean. Michs. 2 Vic.

SPIRITUOUS LIQUORS.

A shopkeeper in this Province may recover for spirituous liquors sold in less quantities than to the value of twenty shillings at a time.—Leith *vs.* Willis. Easter, 6 Will. IV.

STAKEHOLDER—See WAGER.

STOCK—See INFANT.

STOCK NOTE.

The words "value received" in an agreement to the following effect, "I promise to pay to A. B. or bearer, £25, value received, to be paid in merchantable wheat at market price," import a debt due, and are prima facie evidence of a consideration, and such an agreement may be shewn under the counts for money had and received, and the account stated.—Waddle *vs.* M'Cabe. Easter, 4 Will. IV.

The words "value received" in a stock note import prima facie a consideration, and a consideration which cannot legally be enforced may be sufficient to sustain a promise, and an agreement to pay money on a party's not bidding at a Sheriff's sale is not void as being contrary to public policy, when the party making the agreement thereby insured the withdrawal of a claim from the land.—*Ib.* Easter, 5 Will. IV.

Where an action was brought on notes payable in work. Held that the plaintiff could recover without proving a demand and refusal to do some specific work, it being incumbent on the defendant to offer to perform work for the plaintiff.—Teal *vs.* Clarkson. Hil. 6 Will. IV.

STONE.

See also RIDEAU CANAL.

A person who tortiously removes stone from another's land, and works it into mill stones, acquires no property in it thereby, so as to enable him to maintain trespass against the owner of the land, who has taken the mill stones into his possession.—Baker et al. *vs.* Flint. Hil. 3 Will. IV.

STREET SURVEYOR.

A surveyor of streets appointed under the Provincial act 9 Geo. IV. ch. 9, does not come within the protection of 50 Geo. III. ch. 1, which requires actions for any thing done under that act to be brought within three months, nor is he entitled to

notice of action under 24 Geo. II. ch. 44, although, semble, entitled to the protection of that act, as to the action being brought within six months.—McFarlane *vs.* McDougall. Hil. 3 Will. IV.

SURETY.

See also PRINCIPAL & SURETY.—SHERIFF.

A surety by bond for the due performance of the office of a Bank Agent, is not responsible for losses occurring after the nature of the agency has been changed, and the agent appointed a cashier.—Bank U. C. *vs.* Covert et al. Trinity, 7 Will. IV.

SURRENDER.

A tenant in fee may surrender his estate back to the King by act and operation of law, as by accepting a new grant for the same land, or he may surrender by matter of record, but a surrender by matter not of record or a surrender by matter of record founded on an invalid title is insufficient.—Doe McDonell et al. *vs.* McDougall. Trinity, 3 and 4 Will. IV.

TAXES.

See also MANDAMUS.—SHERIFF.

Where lands have been sold for the nonpayment of taxes, a stranger may redeem under 6 Geo. IV. ch. 7, for the benefit of the owner without his knowledge or consent before the year expires, and in computing the year the day of the sale is to be excluded, and if a certificate of redemption be improperly granted, the Treasurer of the District should be made the defendant, and the purchaser should not sue the Sheriff for refusing to execute a conveyance.—Boulton *vs.* Ruttan. Hil. 2 Will. IV.

In ejectment by the purchaser of lands sold for taxes at Sheriff's sale under 6 Geo. IV. ch. 7, it is necessary for him to prove that the writ to sell was grounded on the Treasurer's return, shewing arrears of taxes for eight years, and that there was no sufficient distress on the lands to levy the amount, and semble, it is also necessary to prove that the land had been "described or granted".—Doe Bell *vs.* Reaumer. Trinity, 4 Will. IV.

Land which has not been described by the Surveyor General is not liable to be sold for taxes, and a party claiming under a Sheriff's deed, land which has been sold for taxes, must show that there was no sufficient distress on the land, although he need not shew that all the necessary formalities have been attended to, such as advertising, &c. and the deed may be made by the Sheriff to the assignee of the highest bidder.—Doe Bell *vs.* Orr. Hil. 7 Will. IV.

TENDER.

A plea of tender is not supported by proof of an offer by the defendant to bring money which he does not produce, although the plaintiff says that he will not accept the sum mentioned unless a further sum be paid. — Thomson *vs.* Hamilton. Easter, 6 Will IV.

A plea of tender and refusal and that the defendant was always ready to pay at a particular place, held sufficient on general demurrer.—*Ib.* Hil. 7 Will. IV.

TITLE.

In covenant for title, the breaches assigned were, want of seisin in fee, and an eviction by a stranger, alleged in the declaration to be entitled, to which the defendant pleaded a seisin in fee in himself. Held that on the plaintiff proving an eviction by the stranger, without shewing his title, it was incumbent on the defendant to give evidence of a seisin in fee in himself.—Vary *vs.* Muirhead. Easter, 1 Will. IV.

Where to a declaration in covenant for title generally, and breach that the defendant had no title, the defendant pleaded a seisin in fee. Held that the issue lay on him, and that he must shew such seisin by proof of actual possession at some time, as prima facie evidence of his estate in fee, although the plaintiff offered no evidence in support of his breach. But the rule is otherwise where the covenant is only against the party's own act.—McKinnon *vs.* Burrows. Easter, 3 Will. IV.

In an action for breach of covenant for good title, no damages can be recovered for improvements or the increased value of the land, the purchase money and interest forming the measure of damages.—*Ib.* Trinity, 4 & 5 Will. IV.

The Court will not compel a vendee of real property, who has recovered from his vendor the amount of purchase money and interest for a defect in the vendor's title, to stay proceedings on his judgment, until he gives up the possession of the land conveyed. The vendor must proceed by action to recover possesion.—*Ib.* Hil. 5 Will. IV.

TIMBER.

A sale of growing timber is within the provisions of the Registry act, and where A. by deed sold growing timber to B. and afterwards conveyed the land to C. without reservation, and C. registered his deed first. Held,that C.'s deed must prevail, and that B. could not maintain trespass against him for cutting the timber, although C. had notice of B.'s deed before registering his own. — Ellis *vs.* Grubb. Michs. 5 Will. IV.

TORONTO.

The Gaol limits of the City of Toronto do not include the liberties of the City.—King *vs.* Latham. Hil. 7 Will. IV.

TRESPASS.

See also SHERIFF.

In trespass for driving against and killing the plaintiff's horse, the defendant cannot under the general issue, prove that it was an accident and arose from the plaintiff's own negligence, the defence should be specially pleaded.—McDonald *vs.* Monk. Hil. 3 Will. IV.

A person who tortiously removes stone from the property of another, and works it into mill stones, acquires no property in it thereby, so as to enable him to maintain trespass against the owner of the land who has taken possession of the mill stones.—Baker et al. *vs.* Flint. Hil. 3 Will. IV.

Where in trespass quare clausum fregit and de bonis asportatis, the defendant makes title in his plea and gives color, the plaintiff must answer the title alleged or reply specially, he cannot reply generally as to a plea of liberum tenementum, and to reply to a plea justifying the removal of goods as encumbering the defendant's close, that the defendant was not lawfully possessed, or de injuria generally, when the defence pleaded rests upon a title or possession, not connected with the personal conduct of the parties, is bad.—Thompson *vs.* Breakenridge. Easter, 3 Will. IV.

Where a declaration in trespass contained two counts—the one for cutting down trees, and the other for carrying them away—and the defendant justified as to the cutting down the trees, in the said declaration mentioned, because the close in which the trees were growing was his soil and freehold, wherefore in his own right, he committed the said several trespasses in the said declaration mentioned in the said close, in which, &c., and the plaintiff demurred specially, because the introduction was inconsistent with the body of the plea, being in bar of only part of the trespasses, whereas the body was in bar of all. The plea was held sufficient. —Ostrom *vs.* O'Conner. Easter, 4 Will. IV.

Where a statute gave power to certain persons to enter on lands in the neighbourhood of a bridge, to quarry stone to keep the bridge in repair, &c., doing no unnecessary damage therein. Held, that the power must be strictly pursued, and that any abuse of it by excess was punishable in trespass.—Myers *vs.* Howard et al. Hil. 5 Will. IV.

Where A. being indebted to B. and C. and being insolvent, was about to leave the country,but desired to secure B.'s debt, and instructed his clerk to that effect, who after his departure made an assignment of his goods to B. without B.'s knowledge or consent, and before B.'s assent was received, C. issued an attachment against the goods and they were seized by a Sheriff. Held that the sale to B. was not complete until his assent was received, and that the Sheriff, having seized the goods before such assent, could not be treated as a trespasser.—Barrett *vs.* Rapelje. Easter, 5 Will. IV.

Where an attorney directed a sheriff not to give up the goods of A., seized under an attachment as the goods of B. Held, that he became a trespasser by such direc-

tion.—Radenhurst *vs.* McPherson, et al. Trinity, 5 & 6 Will. IV.

In trespass for taking goods, &c., if they are not specifically set out in the declaration, it will be bad on general demurrer, and a plea justifying the taking the goods of A. under a writ against the goods of B., and that divers goods of B. were in A.'s possession, without averring them to be the same goods, is bad on special demurrer.—Friesman *vs.* Donelly, et al. Hil. 6 Will. IV.

Where a lessee under the Crown, gave notice of his lease, to a person who had been in possession of the land leased without licence, before the lease was granted. Held, that without actual entry, he might maintain trespass against the intruder, for cutting down timber after such notice.—St. Leger *vs.* Manahan. Easter, 6 Will. IV.

The plea of liberum tenementum to a declaration in trespass quare clausum fregit, and carrying away the plaintiff's hay and corn, &c., is bad on demurrer.—Wilcox *vs.* Montgomery. Michs. 7 Will. IV.

If, in trespass against several defendants, the plaintiff prove a joint trespass against all on one count, and then attempt, but fail, to prove a trespass against all on another count, he is still entitled to recover for the trespass first proved.—Watson *vs.* Riorden et al. Michs. 7 Will. IV.

Where a testator devised his house to his wife for life, and also left her some personal property, and the Executors, in her absence, entered the house, for the purpose of making an inventory of the property, and afterwards turned out her daughter, and shut the house up. Held on trespass brought by the wife, that this was sufficient proof under the issue of excess.—Honsberger *vs.* Honsberger et al. Hil. 7 Will. IV.

A master is liable for the act of his farm servant, in impounding cattle, in his absence, the servant acting within the general scope of his authority.—Spafford *vs.* Hubble. Easter, 7 Will. IV.

A defendant, against whose goods a sheriff had a writ of execution, (which was afterwards set aside for irregularity) drove to the sheriff's office, and gave his deputy a list of his property as seized, but without any actual seizure. Held not sufficient to support trespass against the then plaintiff.—Hervey *vs.* Alexander. Hil. 2 Vic.

An agreement to enter upon and clear land, and take the wood after it is cut down in payment of the labor, is not for an interest in lands within the Statute of Frauds; and the person clearing the land, may maintain trespass against the owner of the land, for taking away the wood after it is cut down, although he has no possession in the land to enable him to maintain trespass quare clausum fregit.—Hamilton *vs.* McDonell. Easter, 2 Vic.

In trespass quare clausum fregit, a house, in one part of which the plaintiff's shop was kept, and in the rest, the plaintiff's clerk and his family resided, although the plaintiff never resided there, was properly described as the plaintiff's dwelling-house.—Beatty *vs.* McMasters et al. Trinity, 2 & 3 Vic.

In trespass quare clausum fregit, a plea justifying the entry under an attachment against a stranger under the absconding debtor's act, was held bad on special demurrer, as amounting to the general issue.—Green *vs.* Hamilton. Hil. 3 Vic.

Where a horse was stolen from the plaintiff, and bought by the defendant at Public Auction, but not in market overt, and the plaintiff afterwards seeing the horse, took possession of it, and the defendant immediately retook it. Held, that the plaintiff had a right to retake it, no property having passed to the defendant by the sale, and that although it was only in his possession for a moment, yet the property revested in him, and he could maintain trespass against the defendant for the retaking, and that as the thief was unknown, it was not necessary to shew a prosecution to conviction.—Bowman *vs.* Yielding et al. Michs. 3 Vic.

TRIAL.

See New Trial.—Practice.

TRIAL AT BAR.

The Court will not grant a trial at bar, merely because the party applying for it

is a barrister.—Doe Palmer *vs.* Dickson. Trinity, 11 Geo. IV.

TROVER.

Bond. — Trover may be maintained against the obligor of a bond, who has wrongfully torn off his seal, and damages may be recovered to the amount of the penalty.—Bank U. C. *vs.* Widmer. Hil. 2 Will. IV.

Horse.—Conversion.—Where the defendant was to pay a sum of money for the plaintiff, who gave him a horse in security for the payment, and the defendant without paying the money used the horse. Held that the plaintiff could not treat such use as a conversion and bring trover without a demand.—Forester *vs* Spencer. Hil. 3 Will. IV.

Rideau Canal.—Trover lies against a lock-keeper on the Rideau Canal for not delivering up lumber, seized and detained by him under the provisions of the Rideau Canal Act, for obstructing the navigation on a tender of the charges occasioned by such seizure, and the removal of the obstruction.—Gould *vs.* Jones. Hil. 2 Will. IV.

Horse.—Where the defendant received two horses from the plaintiff to sell at a certain price, and without his authority or assent sold them at a less price. Held that he was liable in trover for the difference.—Priestman *vs.* Kendrick. Hil. 3 Will. IV.

Property. — When personal property was taken in execution by a Sheriff, and afterwards abandoned by the direction of the plaintiff's Attorney, and a memorandum of the suit being discharged given to the defendant, but the Sheriff was afterwards directed to proceed, and sold to the plaintiff in this action, (the property in the mean time having been transferred bona fide by the defendant to a third party, who had left it in the possession of the defendant in this action.) Held that no property passed by the Sheriff's sale, as the levy had been previously abandoned, and that consequently the plaintiff could not maintain trover.—Gould *vs.* White. Hil. 5 Will. IV.

Damages.—Where the plaintiff agreed to build a house for the defendant, who paid a certain sum in advance, and gave the plaintiff permission to make the bricks of which the house was to be built on his land, and to sell any surplus, and the plaintiff not proceeding with the building, the defendant seized some bricks which the plaintiff had made, and a number of articles belonging to the plaintiff. Held on trover brought by the plaintiff for the value of the bricks and the other articles, that no damages could be recovered for the seizure of the bricks, as under the agreement they were the property of the defendant, and the Jury having estimated their value in the damages, a rule was made absolute to reduce the verdict. Wilcox *vs.* Burnside. Trinity, 5 and 6 Will. IV.

Crown Grant.—Quære, is the evidence of the Secretary of the Province, that it appears by an entry in his own hand writing in a book kept for such entries, that a Crown grant was delivered to A., and that he therefore was convinced that it had been delivered to A., sufficient to charge A. in trover with the possession of such crown grant, and if A. obtained such grant without any direction or authority from the grantee, but from the direction of some public officer to the Secretary to deliver to A. such grants as he should require, was possession obtained under such order tortious, and did it afford evidence of a conversion at that time?—Hampson *vs.* Boulton. Hil. 6 Will. IV.

Horse.—Where A. lent a horse to B., in whose possession he was injured, and notice immediately given to A., who refused to receive him from an Inn, where he had been left by B., and afterwards made a formal demand of him from B. Held that the non-delivery in compliance with that demand, the horse not having been at the time in B.'s possession, was no evidence of a conversion.—Wells *vs.* Crew. Trinity, 6 and 9 Will. IV.

Partner.—One partner cannot bring trover against another for converting the partnership property.—Smith *vs.* Book. Trinity, 1 and 2 Vic.

Conversion.—Demand.—Where a demand is necessary in trover to prove a conversion, if it be verbal, the answer must be positive, and where a verbal demand was made on the defendant, while driving at a distance from his house, where the property demanded was, and no answer was returned. Held no evidence of a conversion.—McLellan *vs.* Graham. Easter, 2 Vic.

Deed.—Trover may be brought for a deed passing a fee simple, and the jury may give the full value of the land as the measure of damages.—Burr *vs.* Munro. Michs. 3 Vic.

TRUSTEE.

A disclaimer by an Executor who is also a trustee under the will, does not divest him of his estate as trustee.—Doe Boyer *vs.* Claus. Easter, 3 Will. IV. Doe Berringer *vs.* Hiscott. Michs. 3 Vic.

A devise to trustees to convey gives them a fee simple in joint tenancy without words of inheritance.—Doe Berringer *vs.* Hiscott. Michs. 3 Vic.

USE AND OCCUPATION.

In an action for use and occupation, an averment, that one A. B. occupied the premises at the special instance and request of the defendant, was held to imply a sufficient allegation of a permission by the plaintiff to occupy, on motion in arrest of judgment, after judgment by default.—Moffat *vs.* M'Crae. Michs. 19 Geo. IV.

USURY.

Promissory notes were held not to be usurious, which were made payable with interest computed from a time several years prior to their date, it appearing that the debt to secure which they had been given, was due at the period from which the interest was to run.—Gates *vs.* Crooks. Easter, 1 Will.

Where A. having purchased land at Sheriff's sale for £82, and not being able at the time to pay for it, applied for a loan of the money to B., who was an Attorney, and had claims in his hands against the person for whose debts the land were sold, and B. agreed to advance it, on A.'s repaying £132 in three days; and A. having received a deed of the land from the Sheriff, conveyed it to B., subject to redemption on payment of £132, and B. transmitted the bonus on the loan £50 to his client as so much received on his claims. Held to be usury in B.—McDonell q. t. *vs.* Kirkpatrick. Hil. 4 Will. IV.

In an action of ejectment brought by a Sheriff's vendee of lands sold on an execution, against a purchaser from the debtor before execution, in which it was contended that the deed to the defendant was usurious. Held that the debtor was a competent witness to prove the usury.—Doe Springsted *vs.* Hopkins. Trinity 7 Will. IV.

VARIANCE.

In an action on an award, the submission to arbitration as set out in the declaration mentioned three defendants, and the award in reciting that submission noticed only two, but referred to the rule by which the submission was made *as annexed to the award*, in which rule the three defendants were named. Held that the variance between the submission set out in the declaration and that recited in the award was immaterial, as the submission itself agreed with the declaration.—Hall *vs.* Mathison. Hil. 10 Geo. IV.

In case for a malicious prosecution, the declaration stated the trial before the Hon. Levius P. Sherwood and A. McDonell, assigned by His Majesty's Letters Patent, to them and others named therein directed, and the record in evidence, was of a trial before the Hon. Levius P. Sherwood, and others, his fellow Justices, assigned by letters patent, directed to him and others, or any two of them, of whom he was to be one. Held no variance.—Prentice *vs.* Hamilton. Trinity, 1 & 2 Will. IV.

In trespass for mesne profits of close of husband and wife, and proof of judgment recovered in ejectment on the demise of the wife alone. Held a fatal variance.—Ashton and wife *vs.* Keesar. Michs. 7 Will. IV.

VENDOR AND PURCHASER.

The Court will not compel a vendee, who has recovered from his vendor the

amount of purchase money and interest for a defect in the vendor's title, to stay proceedings on his judgment until he gives up possession of the land conveyed. The vendor must proceed by action to recover his possession.— McKinnon *vs.* Burrows. Hil. 5 Will. IV.

VERDICT.

If a plaintiff at the trial of his cause abandons all the counts in his declaration but one, and obtains a verdict on that one, the defendant is not entitled to a verdict on the other counts, and if such a verdict be rendered the Court will on application discharge it, leaving the plaintiff to dispose of the other counts at his own risk.—Gates *vs.* Crooks. Trinity, 11 Geo. IV.

The affidavits of Jurymen cannot be received to shew that there was a mistake in their verdict unless the mistake also appear on the Judge's notes. — Malloch *vs.* Morris. Trinity, 1 & 2 Vic.

WAGER.

A. betted B. £75 to £50 on a horse race, and deposited the money in the hands of C. the horses did not belong to either A. or B., nor was there any other match or stake for which they were to run, A. lost and gave C. notice not to pay over the money, but C. notwithstanding paid it to B. Held that A. might recover the amount from C. as money had and received, the wager being illegal under 13 Geo. II. ch. 10. — Sheldon *vs.* Law. Hil. 3 Will. IV.

WARRANT.

The amount claimed for debt and costs in a bailable action, must be endorsed on the bailiff's warrant as well as on the writ. — Steele *vs.* Lameux. Easter, 6 Will. IV.

A replication de injuria to a justification under a warrant, is good.—Blair *vs.* Bruce. Trinity, 1 & 2 Vic.

An informality in the warrant of the bailiff who made the arrest, in a bailable action, is not a sufficient ground to set such arrest aside, especially where the writ itself is not produced.—Hussey *vs.* Link. Easter, 2 Vic.

WASTE.

An action on the case for waste may be brought under 6 Edw. I. ch. 5, by him in remainder or reversion for life or years, and where land was devised for life with a reservation of the oak timber thereon, it was held that a power to dispose of other descriptions of timber was not thereby implied, and that the tenant for life was guilty of waste in disposing of such other timber.—Taylor *vs.* Taylor. Easter, 1 Will. IV.

WATERCOURSE.

Where the plaintiffs, who had built mills on a stream, by indenture, granted a licence to the defendant to make a raceway over their lands, for a mill to be built by the defendant further down the stream, provided that the water was not thrown back thereby, nor any injury nor damage occasioned to the plaintiffs' mills, and after the defendant's mill was built, by an accumulation of ice on the by-wash, the water was forced back on the plaintiffs' mills. Held, that the plaintiffs might maintain an action for such injury, and that case, and not covenant on the indenture, was the proper form of remedy.—Eastwood et al. *vs.* Helliwell. Hil. 5 Will. IV.

Where arbitrators, to whom disputes, arising from the overflowing of three acres of the plaintiff's lands by water thrown back from the defendant's mill, were referred, awarded damages to the plaintiff for the injury, and that the defendant's should have a fall of nine feet, and no more, for their mill-dam, provided that the water on the plaintiff's land was not raised thereby; and the defendants raised their dam to nine feet, and overflowed five acres more of the plaintiff's land. Held, that the award did not prevent his recovery of compensation for such farther injury, and that he was entitled to damages for the loss of the additional five acres.—Casler *vs.* Ransom et al. Trinity, 7 Will. IV.

WAY.

In trespass quare clausum fregit, a plea of right of way under a deed must shew the parties to the deed, and a private right of way cannot be claimed by prescription in a less period than twenty years.—Smith *vs.* Smith. Trinity, 3 & 4 Will. IV.

WELLAND CANAL.

The Welland Canal Company are entitled to tolls for that part of the canal commonly called the Chippewa Cut.—Welland Canal Company *vs.* Warren et al. Hil. 1 Will. IV.

WILL.—See DEVISE.

WITNESS.

Partner.—Where a bill of exchange was endorsed by a firm, one of the partners of which resided out of the Province, and the endorsee sued the partners residing here, the other partner was held not to be a competent witness, although released, to prove that the bill was paid.—Ferrie *vs.* Starkweather. Easter, 1 Will. IV.

Bond.—An obligor in a joint and several bond, may be a witness for his co-obligor.—Bank U. C. *vs.* Widmer. Hil. 2 Will. IV.

Promissory Note.—A maker of a joint and several promissory note, is not a competent witness for a co-maker.—Dudley *vs.* Morse. Hil. 3 Will. IV.

Attachment.—An attachment for not obeying a subpœna was refused against a witness, who resided twenty-five miles from the Assize town, and had been subpœnaed only the day before the cause was tried. — Fairclaim dem Thompson *vs.* Putnam. Michs. 6 Will. IV.

Commission.—Where one party to a suit issues a commission to examine witnesses, the other party has a right to call for and make use of it at the trial.—Gordon *vs.* Fuller. Trinity, 6 and 7 Will. IV.

Partner.—In an action for goods sold and delivered, a partner of the plaintiff not joined is a competent witness for the defendant to prove payment.—Wilson *vs.* Stevens. Michs. 7 Will. IV.

Release.—A joint contractor with the defendant not joined in the action, may be a witness for the plaintiff, and a release (though unnecessary) given by the plaintiff to him immediately before the trial to enable him to give testimony, will not operate as a discharge of the defendant, unless pleaded puis darrein continuance.—Boyce *vs.* Parke et al. Easter, 7 Will. IV.

Usury.—In an ejectment brought by a Sheriff's vendee of lands sold on an execution, against a purchaser from the debtor before execution, in which it was contended that the deed to the defendant was usurious. Held, that the debtor was a competent witness to prove the usury.—Doe Springsted *vs.* Hopkins. Trinity, 7 Will. IV.

Security for Costs.—A witness who has given security for costs in the cause, may be sworn on paying the amount of his security into Court at the trial.—Buffalo Bank *vs.* Truscott et al. Michs. 2 Vic.

Interest.—If a witness be called for the plaintiff who is incompetent from interest, and he be afterwards called for the defendant, the incompetency is cured.—Hall *vs.* Shannon. Easter, 2 Vic.

WORK AND LABOR.

A person who tortiously removes stone from another's land, and works it into mill-stones, acquires no property in it thereby, so as to enable him to maintain trespass against the owner of the land, who has taken possession of the mill-stones.—Baker et al. *vs.* Fluit. Hil. 3 Will. IV.

THE END.

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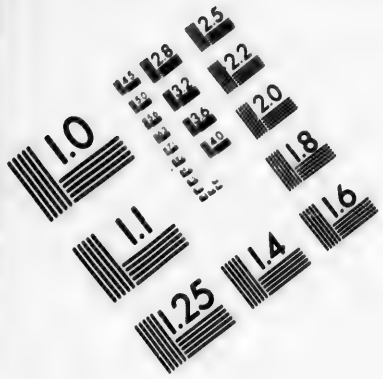

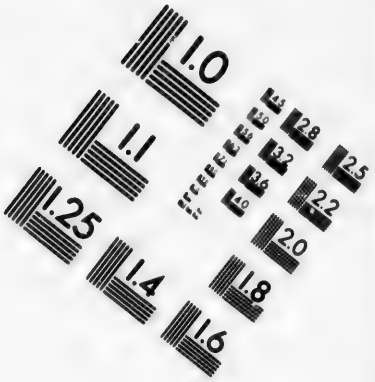

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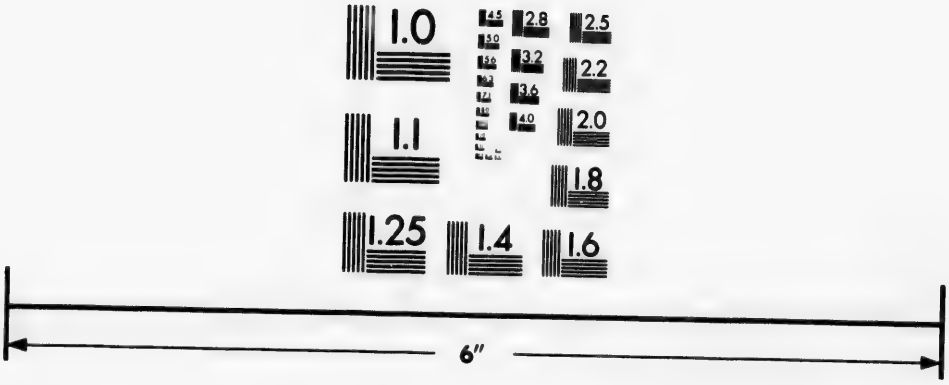

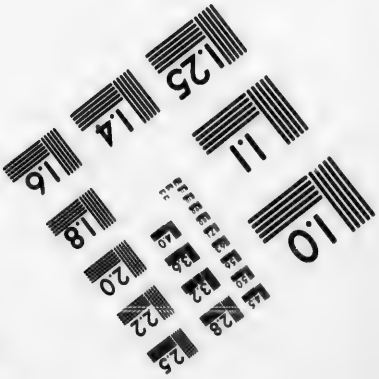

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RULES OF COURT.

MICHAELMAS TERM, 4 GEO. IV.

I.

In future the practice of this Court, as well as the quantum of costs to be allowed in all proceedings, is to be governed, (when not otherwise provided for) by the established practice of the Court of King's Bench in England.

II.

When the Attorney in any cause depending in this Court, resides without the District where the action is brought, all notices, demands, and other papers or pleadings, to be served on such Attorney, shall be deemed regular by being put up in the Crown Office, in the District wherein such action is brought, unless such Attorney have a known agent in the same District, in which case, service on the Agent shall be required.

III.

As soon as may be after filing any inquisition taken under authority of the Statute, passed in the 54th year of Geo. III. The Clerk of the Crown shall cause an extract therefrom containing the name of the person found to be an alien, and describing the land found to have been in his possession or to which he had a title subject to forfeiture, in order that any person having claim may traverse the said Inquisition, and he shall expose such extract in his office from the date thereof to the end of the year from the date of the Inquisition.

IV.

Some person competent to the duties of the office of the clerk of the Crown and Pleas, is to attend there in vacation from 9 o'clock in the morning until three o'clock in the afternoon, and in Term time from 9 till 3 and from six till 8 in the evening. —*See Rule* 12.

V.

Neither the clerk of the Crown and Pleas, nor any of his deputies are to file any affidavit, declaration, plea, roll, record, or other paper or proceeding in any cause, which shall be printed in part, or in the whole, except the ordinary writs and process of the Court.—*See Rule* 7, *Easter Term*, 11 *Geo. IV.*

VI.

All rules, which by the English practice may be had as a matter of course upon signature of counsel at side bar, or are given by the master, clerk of the papers, or clerk of the rules in England, are to be given by the Clerk of the Crown and Pleas, or his Deputies in this Province, in the same manner, and the same may issue either in term or vacation.

VII.

Rescinded.

VIII.

No less than eight days inclusive shall intervene between the Teste and return of all mesne process hereafter to be sued out in any personal action, to be henceforth instituted in this Court.

IX.

The Sheriff to whom any execution, or process in the nature of an execution, shall be directed, shall include in the return of such execution or process, the amount of his fees levied by virtue thereof, and shall specify in the margin the particular items of the same.

X.

In all causes now pending, or hereafter to be brought in this Court, Defendants shall plead within eight days after Common bail and declaration shall have been filed and a plea demanded.

XI.

Every Attorney not resident in the Home District shall enter in Alphabetical order, in a book to be kept for that purpose by the Clerk of the Crown, his name and place of abode, and also in an opposite column the name of some practising Attorney, in the City of Toronto, as his Agent, who may be served with notices,

summonses, and all other papers not required to be personal;) and if any Attorney shall neglect so to enter his name, with that of his agent as before mentioned, fixing up the notice, summons, or other paper in the Crown office, shall be deemed good service.

TRINITY TERM, 4 GEO. IV.

XII.

It is *Ordered* that from and after the end of this Term, the hours to be observed in the Crown Office during Term shall be from eight in the morning to eleven, from twelve to three, and from six in the evening to eight, and that the Office hours in Vacation remain as heretofore, from nine A. M. to three o'clock, P. M.

EASTER TERM, 6 GEO. IV.

It is *Ordered*, that in future, where a rule to shew cause is obtained in this Court to set aside an award, the several objections thereto, intended to be insisted upon at the time of making such rule absolute, shall be stated in the rule to show cause.

HILARY TERM, 7 GEO. IV.

XIII.

It is *Ordered* that from and after the last day of this Term, all demurrer books shall be made up with marginal notes opposite the different counts, and other parts of the pleadings, briefly stating the substance of each part, and when so completed shall be delivered to the judges by the party applying for a concilium before his motion is filed.

XIV.

In future no cause shall be tried at the Assizes for any District, unless the Record of Nisi Prius is delivered on the Commission day, or first day of the Court to the Marshal, who is authorized to receive for the entering or withdrawing of the same, two shillings and six pence.

XV.

That from and after the last day of this Term, when any point or points are reserved at Nisi Prius on the trial of any action, paper books containing correct [illegible] of the pleadings in the suit, and of the point or points reserved, shall be made up and delivered to the Judges, by the party who applies to the Court for a concilium to argue such point or points, or makes any other motion respecting them, and that no such motion shall be made till the paper books be delivered

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EASTER TERM, 9 GEO. IV.

I.

It is *Ordered*, that the seventh rule of this Court made in Michaelmas Term, 4 Geo. IV. be rescinded, and that in future no judgment be entered or any warrant of Attorney to confess judgment, or upon any Cognovit Actionem that shall not have been obtained through the intervention of some practising Attorney of this Court, whose name shall be indorsed on the warrant or cognovit, and unless the affidavit of Execution shall state the same to have been obtained through the intervention of some practising Attorney, whose name is thereon indorsed.

II.

It is *Ordered*, that the the Deputy Clerk of the Crown in outer Districts do not take any affidavits in any cause after final judgment, except affidavits for Ca. Sa's, nor in any matter in which there is no cause pending.

EASTER TERM, 10 GEO. IV.

It is *Ordered*, that from and after the first day of Trinity Term next, the Clerks of the Courts of Assize and Nisi Prius shall, on or before the first day of the Term immediately following the Assizes in each District, return into the Crown Office all Indictments, Records, and proceedings had in the same Court, together with the various Exhibits filed in each cause, and shall, at the same time, deliver to the Clerk of the Crown a list of the said Indictments, Records, and Exhibits.

HILARY TERM, 10 GEO. IV.

Ordered, that the first Friday, the second Monday, and the second Wednesday in every Term be paper days for the

arguing demurrers, special cases, special verdicts, or points reserved ; and that on those days the paper list be gone through before any other motion or business is entertained.

EASTER TERM, 11 GEO. IV.

I.

It is *Ordered* by the Court that the 18th rule of this Court be rescinded, and that henceforth the Clerks of Assize shall attend in Court during the first four days of the Term, immediately following the Assizes in each District, with all Indictments, Records, and proceedings from their respective Circuits, together with the various exhibits filed in each cause, and not returned to the parties by order of a Judge, and that they shall, immediately after the rising of the Court, on the fourth day of its sitting, return to the Crown Office all Indictments, Records, Proceedings and Exhibits remaining in their possession, and shall, at the same time, deliver to the Clerk of the Crown a list of the same.

II.

It is *Ordered* by the Court, that from and after this Term of Easter, on every Judge's summons or appointment, to be made by the master, [having been served on the day previous to that on which the attendance shall be required,] the person on whom the same shall be served, and who shall be required to attend, shall attend such summons or appointment without a second, or, in default thereof, the Judge or Master may proceed ex parte on the first.

III.

It is *Ordered* by the Court, that after this term the practise of the Court of King's Bench in England, with respect to Imparlance, shall not be in use in this Province, but that in all cases the party shall plead at the expiration of the demand of plea, unless he obtain an order for further time.

IV.

It is *Ordered* by the Court that, hereafter, no rule to plead, reply, or rejoin, shall be necessary, but that a demand shall be sufficient, as in respect to a plea in actions by non-bailable process.

V.

It is *Ordered* by the Court that, hereafter, it shall be sufficient to leave the consent and plea in ejectment at the Office of the Clerk of the Crown and Pleas, and that no entry thereof need be made with any judge.

VI.

It is *Ordered* by the Court that, hereafter, it shall not be necessary to furnish issue-books or paper books in any case, and that the clerks, in passing the record, shall add the similiter as of course.

VII.

It is *Ordered* by the Court, that the 5th rule of this Court, made in Michaelmas Term, 5 Geo. IV., be rescinded, and that in future no original declaration or other pleading, roll, or record shall be received in the Office of the Clerk of the Crown and Pleas, or of any of his deputies, unless the same be engrossed or written in a plain and legible manner.

VIII.

It is *Ordered* by the Court that, hereafter, any number of names may be included in one writ of subpœna.

IX.

It is *Ordered* by the Court that, in any action of the proper competence of the District Court, in which final judgment shall be obtained without a trial, the Master shall tax no more than District Court costs, unless specially authorized by order of the Court, or of a Judge in vacation.

X.

It is *Ordered* by the Court, that fees shall not in any case be taxed to more than two counsel, upon any trial or argument to be had hereafter.

XI.

It is *Ordered* by the Court, that no Counsel's fee on motions shall be taxed in respect of any rule which may be obtained, without filing a motion paper in Court, or in Term time.

XII.

It is *Ordered* by the Court, that no fee or other charge shall be payable for any writ to warrant a testatum, unless such writ shall be actually sued out by the party.

XIII.

It is *Ordered* by the Court, that at the foot of every bill to be hereafter taxed, the Attorney shall certify under his hand that every service and disbursement charged has been actually and necessarily rendered and made, which certificate shall, nevertheless, in no case, be taken to dispense with the requisite affidavit of disbursements, or to warrant any charge not otherwise taxable.

XIV.

It is *Ordered* by the Court, that after this present Term of Easter, in every case in which the costs taxed shall exceed £20, it shall be necessary for the Attorney obtaining the taxation to leave with the Master a fair copy of such bill at the time of taxation, which copy shall be furnished gratis; and that the master shall deliver into court, during each term, all such copies of bills as have been furnished to him since the preceding term, on which shall appear the allowances as they have been taxed.

XV.

It is *Ordered* by the Court, that an order for revising taxation may issue as a matter of course upon a motion in Court, or upon a Judge's Summons, and that all fees upon such motions or orders shall be taxed as on motions of course.

A new table of costs was also settled and ordered by the Court.

TRINITY TERM, 11 GEO. IV.

It is *Ordered* by the Court, that the process for compelling the appearance of a Corporation aggregate in this Court, shall be by a writ of summons, in the following form:—

"*By the Grace of God, &c.*

To the Sheriff of ——— GREETING:

We command you that you summon the (insert the proper name of the Corporation), to appear before us in our Court of our Bench at Toronto, on the ——— day of ——— to answer the complaint of A. B., in a plea of (as the case may be,) and have then there this writ.

Witness, the Hon. (Chief Justice or Senior Puisne Judge of the Court of King's Bench, as the case may be,) this ——— day of ——— in the ——— year of our Reign."

Which writ shall be served agreeably to the Law and practice in England, in respect to Corporations aggregate; and that if, within eight days after the return of such process, the Corporation having been duly served therewith, shall not have appeared, then it shall be competent to the plaintiff to obtain the process of distringas, and to proceed thereon according to the law and practice in England.

EASTER TERM, 1 WILLIAM IV.

It is *Ordered* that when the original or first process is required in the action of Dower, a writ of summons may issue under the seal of this Court, in the following form:—

"*William the Fourth, &c.*

To the Sheriff of ——— GREETING:

Command A. B. that justly and without delay, he render to C. D., widow, who was the wife of E. F., her reasonable dower, which falleth to her of the freehold, which was of E. F., her late husband, in ——— whereof she has nothing, as she says, and whereof she complains that the said A. B. deforceth her, and unless he shall do so, then summon by good summoners, the said A. B. that he be before us in our Court of our Bench at Toronto, on ——— the ——— day of——— Term, to show wherefore he has not done it, and have there the summoners and this writ. Witness, (as in other writs issued from this Court.)

The time of return to be conformable to the English practice in such cases.

HILARY TERM, 1 WILLIAM IV.

I.

It is *Ordered*, that in real actions generally a writ of summons may issue from

this Court, corresponding with the form usual in England, and tested in the same manner as writs of Capias ad Respondendum, issued from this Court. The time of return to be conformable to the English practice in such cases.

II.

It is *Ordered*, that when by reason of any privilege, the proceedings are not commenced by writ of Capias ad Respondendum, a demand of plea may be served at any time when, by the practice in England, a rule to plead might be given, and not before; and that the service of such demand of plea shall suffice as in other cases, without the necessity of taking out any rule to plead.

III.

It is *Ordered*, for the more convenient and safe keeping of the Records of this Court, that all Rolls and Records to be filed with the Clerk of the Crown, shall be upon parchment, or paper of such width and length as he shall prescribe by a written notice to be affixed to some conspicuous place in his office, and in the office of each of his deputies, and that the office shall not be bound to receive any Roll or Record not made up in conformity to such notice.

N. B.—Not to exceed 13 inches in length or four in width.

TRINITY TERM, 3 & 4 WILL. IV.

I.

It is *Ordered*, that in future, when bail which has been put in in the country is to be justified in Court, the bail-piece, with the affidavit of the due taking thereof, and the affidavit of justification, shall be taken from the Deputy Clerk of the Crown of the District in which they have been filed, and shall be produced in Court upon the motion for allowance, and afterwards filed in the Office of the Clerk of the Crown and Pleas at Toronto, and that the Deputy Clerk of the Crown shall, on notice given to him for that purpose, on behalf of the party moving for allowance, transmit the same to the principal Office, in order that this rule may be complied with.

II.

Where the Defendant is described in the process or affidavit to hold to bail by initials, or by a wrong name, or without a christian name, the Defendant shall not be discharged out of custody, or the bail bond delivered up to be cancelled on motion for that purpose, if it shall appear to the Court that due diligence have been used to obtain knowledge of the proper name.

III.

It is *Ordered* that, upon every bailable writ and warrant, and upon the copy of any process served for the payment of any debt, the amount of the debt shall be stated, and the amount of what the Plaintiff's Attorney claims for the costs of such writ or process, arrest or copy and service, exclusive of mileage and attendance to receive debt and costs; and that upon payment thereof, within four days, to the Plaintiff's Attorney, or to the Plaintiff, when the writ shall have been sued out by the Plaintiff in person, further proceedings will be stayed. But the Defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the Plaintiff's Attorney shall pay the costs of taxation. The indorsement shall be written or printed in the following form:—

"The Plaintiff claims ——— for debt, and ——— for costs, exclusive of mileage; and if the amount thereof, with the charge for mileage, be paid to the Plaintiff's Attorney, (or to the Plaintiff, if he sues in person,) within four days from the service hereof, further proceedings will be stayed."

IV.

It is *Ordered*, that every affidavit shall contain the christian name or christian names, and surname of the Defendant, written at length, with his place of abode and addition. See Beasley 1 W 4

V.

It is *Ordered*, that the expense of a witness, called only to prove the copy of a judgment, writ, or other public document, shall not be allowed in the costs, unless

the party calling him shall, within a reasonable time before the trial, have required the adverse party, by notice in writing and production of such copy, to admit such copy, and unless such adverse party shall have refused or neglected to make such admission. This rule not to take effect until next Michaelmas Term.

VI.

It is *Ordered*, that the expense of a witness called only to prove the hand-writing to, or the execution of any written instrument stated upon the pleadings, shall not be allowed, unless the adverse party shall, upon summons before a Judge, a reasonable time before the trial, (such summons stating therein the name, description, and place of abode of the intended witness,) have neglected or refused to admit such hand-writing or execution, or unless the Judge, upon attendance before him, shall endorse upon such summons that he does not think it reasonable to require such admission. This rule not to take effect until Michaelmas Term next.

VII.

A summons for particulars, and order thereupon, may be obtained by a Defendant before appearance, and may be made if the Judge think fit, without the production of any affidavit.

VIII.

It shall not be necessary that any pleadings which conclude to the country, be signed by counsel.

IX.

It shall not be necessary to the regular service of a rule, that the original rule should be shewn, unless sight thereof be demanded, except in cases of attachment.

X.

It is *Ordered*, that judgment may hereafter be signed after verdict, or assessment of damages without any rule for judgment, but not before the time when judgment may be signed according to the present practice of this Court.

MICHAELMAS TERM, 4 WILL. IV.

It is *Ordered*, that after the first day of Hilary Term next, no Attorney of this Court shall issue a writ of capias, as a Commissioner in any case in which he shall be concerned, as Attorney for the Plaintiff.

EASTER TERM, 4 WILL. IV.

It is *Ordered* that the rule of this Court, of Trinity Term, 3 and 4 Will. IV., which requires that every affidavit shall contain the christian name, or names and surname of the Defendant written at length, with his place of abode, and addition, be rescinded, so far as respects the place of abode and addition of Defendant.

II.

It is *Ordered*, that the rule of Easter Term, 11 Geo. IV., regulating the amount of costs to be taxed, in civil and criminal cases, be amended, in that part of it which relates to the Counsel's fee, with brief at trial or assessment; by adding, at the end of that item, the words "or by order of a Judge," to such sum as shall appear proper under the circumstances of the case.

TRINITY TERM, 5 WILL. IV.

I.

It is *Ordered*, that in future rules Nisi for referring to the Master, to compute principal and interest, and to pay the costs after judgment by default, in actions upon promissory notes, or in other actions in which a reference may be made to the Master, for the same purposes, may, if the plaintiffs shall desire it, be made returnable at the expiration of such number of days, after the day of service, as shall be expressed in such rule; and that the practice be the same in this respect, upon Judge's summons for the same purpose. And, it is further *Ordered*, that upon the rule being made absolute, or, upon the granting of a Judge's order in any such case, the Plaintiff may proceed to tax his costs, and enter up his judgment without service of such rule or order, or of any notice; and that the rule

Nisi, or Judge's Summons, shall be so drawn up as to apprize the Defendant that judgment will be entered without further notice, unless cause be shewn to the contrary.

II.

It is *Ordered* that the following fees be allowed to Coroners for the services hereinafter named. For summoning Jury, and making return to Clerk of Assize.

For each Juror, actually and necessarily summoned, 1s.

In other respects, same fees as to Sheriffs, for similar services.

TO WITNESSES

Residing within three miles of Court House, ...2s. 6d. per diem.
Do. over three miles,....5s. "
And for every twenty miles travel, as heretofore.

PROFESSIONAL MEN,

Attorneys, Barristers, Physicians, and Surgeons,

20s. per day, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinions.

SURVEYORS.

When called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, 10s. per diem.

MICHAELMAS TERM, 3 VIC.

It is *Ordered*, that the causes at Nisi Prius shall hereafter be called and tried in the order in which they stand in the docket, and according to the practice in England.

THE END.

ERRATA.

Page 4, line 36—For "Russell" read "Bussell."

" 27, last line—For "expired" read "unexpired."

" 32, last line first column, and second and third lines from the top second column, *dele*, "not" and "the covenants executed by A. alone not being sufficient."

" 77, eighth and ninth lines from the foot of second column—For "poundage" read "mileage."